

**DEVELOPMENT OF THE SECULAR AND
RELIGIOUS TAXATION SYSTEM
IN PENINSULAR MALAYSIA**

BY

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بسم الله الرحمن الرحيم
IN THE NAME OF ALLAH
THE MOST BENEFICENT, THE MOST MERCIFUL

DECLARATION

**I, the undersigned, hereby solemnly declare that this thesis is written
by me and does not represent the work of any other person.**

.....
(AZHAR/MOHD NASIR)

April 1999

LEST WE FORGET.....

"Great care is to be exercised in revenue administration, to ensure the prosperity of those who pay the revenue to the State; for it is on their prosperity that the prosperity of others depends particularly the prosperity of the masses. Indeed, the State exists on its revenue. You should regard the proper upkeep of the land in cultivation as a greater importance than the collection of revenue, for revenue cannot be derived except by making the land productive. He who demands revenue without helping the cultivator to improve his land, inflicts unmerited hardship on the cultivator and ruins the State. The rule of such person does not last long. If the cultivator ask for reduction of their land due for having suffered from epidemics or drought or excess or rains or the barrenness of the soil or floods damaging their crops, then, reduce the due accordingly, so that their condition might improve. Do not mind the loss of revenue on that account for that will return to you one day manifold in the hour of greater prosperity of the land and enable you to improve the condition of your towns and to raise the prestige of your State. You will be the object of universal praise. The people will believe in your sense of justice. The confidence which they will place in you in consequence will prove your strength, as they will be found ready to share your burdens. You may settle down on the land any number of people, but discontent will overtake them if the land is not improved. The cause of the cultivator's ruin is the rulers who are bent feverishly on accumulating wealth at all costs, out of fear that their rule might not last long. Such are the people who do not learn from examples or precedents."

Caliph °Alī Ibn Ṭālib to Malik Ashtar, Governor of Egypt.
[Hussin Mutalib; *Islam in Malaysia--From Revivalism to Islamic State?* (Singapore University Press, Singapore, 1993) pp. 150-151].

I propose that you select persons of good character, pious and trustworthy and appoint them as tax-administrators. He who is so appointed should be a person versed in religious law, intelligent, with a logical mind, self-restrained, not known for moral defects and not deserving God's reproof, who expects a reward in Paradise for maintaining the right and being trustworthy and fears punishment

after death should he not behave thus, whose evidence, if given, is accepted, and from whose decisions, when he judges, no miscarriage of justice is feared.

It is absolutely necessary that anyone appointed to a position connected with taxes should be selected with care and examined as to his religious and social way of life, as it is requisite in the case of persons appointed to make decisions and judge.

It follows that he who is appointed by you should not oppress, despise or disregard the tax-payers. He should wear for them a coat of leniency mixed with firmness and a spirit of inquiry without injustice or extortion. Leniency is to be shown to the Muslim, sternness to the wicked, justice to the Ahl al-Dhimma, rectification of wrongs to the oppressed, severity to the oppressors, and indulgence to the people, disposing them to thereby to loyalty and obedience.

The collection of taxes should be carried out as prescribed by law, without any innovations by the administrator, who should refrain from following his personal inclinations, his duty being to treat all taxpayers equally, so that those present and those absent, the noble and the common, may enjoy the same rights and treatment.

Qāḍī Abū Yūsuf, Ya'qūb ibn Ibrāhīm al-Anṣārī to Caliph Hārūn al-Rashīd.

[Abū al-Faraj Qudāma bin Ja'far bin Qudāma al-Kātib al-Baghdādī, *Kitāb alKharāj*, English transl. A. Ben Shemesh (E.J. Brill, Leiden, 1965) .pp. 75-76.]

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I also wish to record my thanks to the Inland Revenue Board (IRB) and the Public Services Department, Malaysia for granting me their sponsorship of this study leave for which, I believe, dedication and commitment to the service would be the best mode of my repayment. For their contribution to this thesis, I wish to thank the respective authorities of the Public Record Office, London and the National Archives of Malaysia in Kuala Lumpur. Special appreciation goes to the dedicated staff, officers and management of the National Archives of Malaysia in Kuala Lumpur for their relentless efforts in providing facilities and assistance, they greatly guided me in the research of materials in an untapped virgin jungle of knowledge.

If this be one of the milestones in one's academic career, then, I owe it to the retired Director General of the Inland Revenue Department, Tan Sri Dato' Abu Bakar Mohd Noor, who was the main force in recommending me for a scholarship, and to my close colleagues in the IRB, Haji Mustaffa Ibrahim and Juremi Hj Napi, who always supported me with materials for this thesis, and to others in the IRB who help me all the way and of most of whom vivid memories still remain. I am truly indebted to my second supervisor Professor Emeritus William R. Roff for allowing me to use materials in his collection to complement Chapter 4 and 5, and also to Haji Mohd Salleh Haji Abd. Rahman, for mailing me materials on the Majlis Agama Islām Kedah, and finally to my colleagues Dr. Kamaruzaman Yusuff (National University of Malaysia), Dr. Abd Basir Muhammad (National University of Malaysia) and Dr Mohamad@Mat Som Sujimon (International Islamic University, Malaysia) for proof-reading and commenting on Chapter 1.

For their teachings of the finer points in my turbulence life, I owed the greatest indebtedness of all to my beloved mother Hajjah Mariam Kastari who has always been my inspiration, providing me with intrinsic and extrinsic motivations to continue my studies even in times of financial difficulties, and to my late father Haji Muhammad Nasir Haji Idris, may Allah be merciful to him, who deep in his heart cherished the wish to see my success but did not live to see it.

Finally, throughout the pursuance of my study, I dedicated this work with affection to my wife Rohayah Abd Wahab for her unflinching support and encouragement, who virtually sacrificed her career for my endeavor, and my only two children Nor Raihan and Nor Fathiah, whose presence made my life pleasant and

meaningful throughout my academic sojourn in Edinburgh and who provided me with the strength to excel in my research and acted as buffers to absorb my research tensions. It is to their inspiration, dedication and inexhaustible support, at times in the midst of discomfort and ill-health, that I wish to dedicate this work.

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ABSTRACT

After the demise of the feudal taxation system of the Malay Sultanate, the system of indirect and direct taxation introduced by the British colonial government was the most important aspect of the fiscal policies of the Malayan government. Though Malaysia progressed in its modernisation programmes, the model of the tax system still maintains its British origin.

The development of the taxation system, secular and religious, in British Malaya and independent Malaysia is the subject of this study which explores its development and impact on fiscal policies and the Majlis Ugama.

Chapter one provides an introduction dealing with the legal basis of Islamic taxation, its assessment and collection which provides the basis for an understanding of the development of religious taxes discussed in Chapters four and five.

Chapters two is divided into three parts. Part I explores the Structure of the Revenue System of the Malay Sultanate and its demise as a result of the imposition of the Colonial Residential System. Part II explores the Advent of British Administration in the Malay Peninsula and Singapore. Part III explores the development of an indirect taxation system based on British precedents for the period 1900-1957.

Chapter three explores the development of taxation on income for the period 1900-1957. The rationale for the latter point is that Malaysia received her independence on 31st August 1957, which in effect saw a gradual transfer of administrative power from colonial to native administrators but still under supervision. Post-1957 saw the secular taxation system reaching its fully developed stage in which almost all instruments of taxation known to the colonial tax administrators enforced in the British Colonies and Protectorates had been introduced in British Malaya.

Chapter four explores the development of the several Majlis Agama Islām Negeri (State Councils of Islamic Religion), which governed religious administration, with emphasis on zakat administration under the auspices of the British Colonial Residential System.

Chapter five explores the development of the federalisation of zakat administration, as a result of public awareness and the advocacy by the Federal Government, which finally led to the possibility of integrating the collection system of taxation [secular and religious] into the administration of the then Inland Revenue Department, and the establishment of a corporate disbursement vehicle, in relation to the privatisation of zakat collection function advocated by the Majlis Agama Islam Negeri.

Chapter six is a concluding chapter.

NOTES ON TRANSLITERATION

In many instances, the writing of this thesis involves the use of words transliterated from Arabic scripts and Malay words adapted from Arabic words. This necessitates the devising of a general system of transliteration. For the purpose of this study only, uniformity of spelling and transliteration will be observed as follows:

A. The modified version of the Encyclopedia of Islam's system of transliteration (EI², 1960) as used by the Department of Islamic and Middle Eastern Studies, University of Edinburgh is adopted in Chapter 1 of this thesis for Arabic and Islamic terms as illustrated in the following table:

Arabic Letter	Vowels	
ع	ē	
ا	ā / Ā	
و	ū / Ū	
ب	b	
ت	t	
ث	th	
ج	j	
ح	ḥ/Ḥ	
خ	kh	
د	d	
ذ	dh	
ر	r	
ز	z	
س	s	
ش	sh	
ص	ṣ/Ṣ	
ض	ḍ/Ḍ	
ط	ṭ/Ṭ	
ظ	ẓ/Ẓ	
ع	ē	
غ	gh	
ف	f	
ق	q	
ك	k	
ل	l	
م	m	
ن	n	
ه	h	
و	w/ū/Ū	w/u/uu
ي	y/ī/Ī	y/i/ii
ا	ā	

However, words ending in *tā marbūtah* are spelt with “h”, for example:

Ummah and not *umma*
maṣṣalah and not *maṣṣalaḥa*

As for Arabic words, in general, these have been quoted in an Arabic transliteration rather than the Malay version. For example:

Kaʿbah and not *Kaabah*
ʿUlamaʾ and not *Ulamak*

Exception, however, is made for Arabic loan words which are used in popular Malay, where despite their Arabic origin, the local usage is adopted. For example:

Adat rather than *ʿĀdat*
Amil rather than *ʿĀmil*
Asnaf rather than *Aṣnāf*
Baitulmal rather than *Bayt al-Māl*
Jihad rather than *Jihād*
Kadi/Kathi rather than *Qādī*
Nisab rather than *niṣāb*
Sedekah rather than *Ṣadaqah*
Ulama rather than *ʿUlamaʾ*
Zakat rather than *zakāh*

B. Malay Words

Since the standardisation of Malay spelling took place only a few decades ago, the new spelling system is used for words found in recent and contemporary works, provided that they are general words, even old Malay spellings are changed to new format. For example:

Kampung and not *Kampong*
Relung and not *relong* (if used as a general term-see the following)
Chandu and not *candu*

But old Malay spellings are retained for proper nouns or where they are found forming part of a legal document or a direct quotation in the original text. For example:

Relong and not *relung* (if used in original text)
Chopong or *chopong* and not *copeng* or *copong*

C. Names of Malay and Local Muslims

Despite their Arabic origins, names of local Malay Muslims are spelt according to their local renderings. For example:

Abdul Aziz and not *ʿAbdul ʿAzīz*
Kamaruddin and not *Qamar al-Dīn*

D. Names of Middle Eastern Muslims

Names of non-Malay personalities are spelt with proper Arabic diacritical masks. For

example:

Abū Yūsuf and not *Abu Yusuf*

Yahyā and not *Yahya*

LIST OF ABBREVIATIONS

The following is a list of abbreviations used in the thesis:

AMN/KL	The National Archives of Malaysia, Kuala Lumpur
AR	Annual Report
BA	British Adviser
CO	Colonial Office
CS	Colonial Secretary
DBP	Dewan Bahasa dan Pustaka, Kuala Lumpur
FMS	Federated Malay States
FMSLR	Federated Malay States Law Review
INTAN	National Institute of Public Administration
JASB	<i>Journal of the Asiatic Society of Bengal</i>
JIS	<i>Journal of Islamic Studies</i>
JMBRAS	<i>Journal of the Malayan Branch Royal Asiatic Society</i>
KL	Kuala Lumpur
LCP	Legislative Council Proceedings of the Straits Settlements
LUTH	Lembaga Urusan dan Tabung Haji (Pilgrims' Fund Board)
MARA	Majlis Amanah Rakyat (Council of Trust for the Indigenous People)
MLJ	<i>Malayan Law Journal</i>
MLR	<i>Malayan Law Review</i>
MoU	Memorandum of Understanding
MSRI	<i>Malaysian Sociological Research Institute Ltd., Singapore</i>
MW	<i>The Muslim World</i>
NL	Non-Liable to Tax
NST	<i>The New Straits Times</i>
PAR	Perak Annual Report
PAYE	Pay As You Earn
PCM	Perak Council Minutes
PFC	Proceeding of the Federal Council
PG	Penang Government Gazette
PGG	Perak Government Gazette
PKM	Partai Komunis Malaya (Malayan Communist Party)
PM	Prime Minister
PMH	Papers on Malayan History
PMS	Papers on Malay Subjects.
PP	Parliamentary Papers (Great Britain)
PRO	Public Record Office, London

SS	State Secretary
SCM	Selangor Council Minutes (Unpublished)
Sel. Sec.	Selangor Secretariat Papers
SJ	Selangor Journal
SS / Colony	Straits Settlements
SSR	Straits Settlements Records (National Museum, Singapore)
ST	Straits Times, Singapore
STD	Schedular Tax Deduction
UFMS	Un-Federated Malay States.
UM	<i>Utusan Malaysia</i>
UME	<i>Utusan Melayu</i>
WO	War Office, London
Y/A	Year of Assessment
YPEIM	Yayasan Pembangunan Ekonomi Islam Malaysia (Malaysian Economic Development Foundation)
EI ¹	The Encyclopaedia of Islam (first Edition)
EI ²	The Encyclopaedia of Islam (second Edition)

GLOSSARY OF ARABIC AND MALAY TERMS

Ahl al-Dhimma (<i>Ar</i>)	Non-Muslim subjects of an Islamic State who have been guaranteed protection of their rights-life, property and practice of their religion, etc.
Ahl al-Kitāb (<i>Ar</i>)	People of the Book, scripturalists
Ansār (<i>Ar</i>)	The believers of al-Madīna who helped the Prophet after his flight from Mecca
°Āmil (<i>Ar</i>)	Agent, representative, those involved in the collection process
°Anwā, °anwatan (<i>Ar</i>)	Force, forcibly
°Āshir (<i>Ar</i>)	Tax collector
Banū Qurayza, and Nadīr (<i>Ar</i>)	Jewish tribes in al-Madīna
Banū Taghlib (<i>Ar</i>)	Arab Christian tribe in Mesopotamia
Bayt al-Māl (<i>Ar</i>)	Public Treasury
Dār al-Islām (<i>Ar</i>)	Territory under Muslim rule
Dhimmī (<i>Ar</i>)	Non-Muslim protected subject of Muslim state
Dihqān (<i>Ar</i>)	Persian landlord
Fay' (<i>Ar</i>)	Spoils of war..thing taken by a victorious army
Fitrah (<i>Ar</i>)	A levy of one gantang Baghdad of rice or its equivalent value in cash on each Muslim every year before the commencement of Eid prayer.
Gantang Baghdad	A measurement equivalent to 2 kati 12 tahlil.
Ghanīma (<i>Ar</i>)	Booty
Hijra (<i>Ar</i>)	Migration of Prophet to al-Madīna
Ḥadīth (<i>Ar</i>)	Oral Tradition
Huma / Bendang	“ladang cultivation”, a sort of a hill-farm system, widely practised by numerous Malays and Indo-Chinese tribes
Imam, Bilal, Nuja	Office bearers of a mosque or surau
Imām (<i>Ar</i>)	Head of state, Authority, Caliph
Jihād (<i>Ar</i>)	Holy war
Jizyah (<i>Ar</i>)	Tax, poll tax or land tax
Kerah	Implies mobilization. Implies forced labour, conscription, mass compulsory free service or corvee.
Mithqāl	a weight of which 20 mithqāl is equivalent to 2.125 tahils or 3.436460 gramme of gold
Mukim	An area usually represented by a few Malay villages
Musim	Period commencing from the time paddy being first sown field to time of harvesting subject to a maximum of 354 days
Nazr	A pledge to God wholly or in part for the benefit of the Muslim community generally or part thereof, as opposed to an individual or individuals
Penghulu / Tok Sidang	Head of a mukim
Qādī (<i>Ar</i>)	Judge

Qariah	The area prescribed by the Majlis in accordance with the provisions of the Enactment of respective Malay states within which a mosque is situated
Sawāfī (<i>Ar</i>)	State Land
Ṣadaqah (<i>Ar</i>)	Tax see zakāt
Setiausaha	Secretary
Ṣulh (<i>Ar</i>)	Peace treaty
Tauliah(Surat Kuasa)	A Letter of Authority issued annually by the President of the Majlis
°Ushr (<i>Ar</i>)	Tithe, tax generally
waqf	The detention of a property in the ownership of God and devoting its usufruct in charity.
Yang di Pertua	President
Zakat Batin	zakat fitrah
Zakat Zahir	All zakat other than zakat fitrah
Zakāt (<i>Ar</i>)	Taxes, legal alms, poor-rates

Grain Measures

2 kai or 4 kupoe	=	1 chupah (<i>chupak</i>)
4 chupahs	=	1 gantang
16 gantangs	=	1 nallie (<i>naleh</i>)
10 nallies	=	1 cooncha (<i>kuncha</i>)
5 coonchas	=	1 coyan (<i>koyan</i>)

The coyan is 800 gantangs--one coyan by measure of rice, weighs about 6,033 lbs. avoirdupois and is nearly equal to 1,044 bushels.

Land Measures

1 jumba	=	12 fet sq., 144 feet superficies
20 jumbas	=	1 sq. orlong
1 orlong	=	400 sq. Jumbas

An orlong is nearly equal to 1½ acre, or 1 acre, 1 rood and 12 perches

Weights [avoirdupois]

	lbs.	oz.	drs.
1 tai or tahl, nearly			23
16 tahils = 1 cattie (<i>kati</i>) = 1½ lbs or	1	6	13
100 catties = 1 piul (<i>pikul</i>) = 133½ lbs			

40 piculs = 1 coyan. But the coyan, being a measure, the weight must depend on the article measured.

3 piculs = 1 bhara = 428 lbs.

[Measures extracted from: James Low, *The British Settlement of Penang*, pp. 319-320].

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Chapter One

The Development of Islamic Taxation

Chapter 1

The Development of Islamic Taxation in Early Islām

Introduction--Fay'(spoils of war) and Ghanīma (booty)

The Islamic State began as a community for war and defense. Further differentiation of state functions began only later and was gradual. The central drive during the first stage was for territorial expansion, involving the necessity of constant military preparedness. It was this that mainly determined the structure of Islamic public finance in those days. The state budget and the organisation of a military aristocracy shaped the requirements of state and society. The policy of state revenues derived mainly from taxation was therefore adapted to correspond to this objective.¹

As a result of an aggressive expansion of the early Islamic state, *fay'* (spoils of war) and *ghanīma* (booty) became the main sources of income to the state and participants of the war. *Fay'* was a form of tribute from lands conquered by Muslims² and also what the Islamic state received under a peace treaty through the payment of *jizyah* and *kharāj*.³ *Ghanīma* comprised tangible and moveable assets (such as properties, weapons and animals) forcibly seized (*‘anwatan*) in fighting, from enemies on the battlefields together with captured land which was part and parcel of the aftermath of the war. Prior to ‘Umar’s administration, captured land was distributed in exactly the same manner as the distribution of captured assets. However, it was a known

¹ Alfred Bonn , *State and Economics in the Middle East--A Society in Transition*, 2nd. ed. (Routledge & Kegan Paul Ltd, London, 1955), p. 51.

² Reuben Levy, *The Social Structure of Islam*, 2nd. ed. (Cambridge University Press, London, 1955) p. 308.

³ Yaḥya Ben Ādam, *Kitāb al-Kharāj*, transl. by A. Ben Shemesh, *Taxation in Islam*, vol. I (E.J. Brill, Leiden, Netherlands, 1967) pp. 23-25. *Kharāj* land is the term given to the land taken under the treaty of peace, on condition that the people would pay *kharāj* tax to the Muslims. If the land is taken by force but the inhabitants were left there and certain payment was imposed upon them, then this payment is known as *fay'*.

fact that the Prophet had retained some part of the captured land and allocated the rest. After the demise of the Prophet, Abū Bakr, ʿUmar and ʿUthman divided the 1/5th retained into 3 shares for orphans, the poor and wayfarers.⁴

Legal Basis of the Revenue System in Islamic Law

Zakāh

Voluntary to Compulsory Obligation

The system of taxation in the early Islamic state was not clearly defined. The first Islamic tax known to be imposed upon the Muslims, as early as in Mecca itself, was zakāh.⁵ In its early development, before the mass migration (Hijrah) to Medina, Muslims in Mecca were encouraged to look after the poor and this charitable activity seems to have been exhorted without any compulsion. It should be pointed out that when the Muslims in Mecca were still countable and lived in distress with no rulers or a stable political organisation, they already had a Holy Qurʾān that focussed on the social problem of poverty and ways to alleviate and eradicate it. Thereafter in Medina, an order of divine revelation, probably in the year of 2 A.H., made zakāh a compulsory duty for all Muslims. Apparently, the rationale behind this gradual enforcement was to let the new faith establish its grip on the believers and once the number of believers had significantly increased with better understanding of the new faith, it was then timely to make zakāh compulsory.⁶

⁴ Al-Qurʾān, 8:42; Yaḥya Ben Ādam, *op. cit.*, pp. 23-24; Abū Yūsuf, *Kitāb Al-Kharāj*, transl. by Abid Ahmad Ali (Islamic Book Centre, Lahore, 1979) p. 32. In the early stage, 1/5th of the ghanīma belongs to God and the Prophet distributed it to the recipients as specified by the Qurʾān: the Prophet himself and his relatives, the orphans, the poor and the followers of the way. The balance 4/5th was evenly distributed amongst the Muslim troops and those who had participated in the battle in any capacity.

⁵ The term *zakāh* (Arabic) in this chapter is the same meaning as *zakat* (Malay) used in Chapter 4, 5 & 6.

⁶ Asiah Yaacob, *The Economic Policies of the Prophet - With Special reference to the Alleviation of Poverty*, Unpublished Thesis, (University of Edinburgh, 1993), pp. 235-237, 240-242. Cf. Yūsuf al-Qaraḍawī, *Fiqh al-Zakāh*, transl. by Salman Harun, *et. al.*, *Hukum Zakat*, (P.T. Pustaka Litera AntarNusa, Jakarta, 1993) pp. 50-51 and the chapter on “Zakāh in Meccan and Medinan Period”, pp.

As far as the word the word *zakāh* is concerned in the Qur'ān, it occurs in 32 places,⁷ 11 of which are regarded as Meccan⁸ and 21 Medinan.⁹ In 23 of these 32 verses,¹⁰ the word *zakāh* occurs together with the word *ṣalah* (prayer) which indicates to Muslim jurists that they are devoted to the obligatory payment of *zakāh*. The constant linkage between *zakāh* and prayer confirms their equal significance.

It's worth noting that al-Qur'ān is silent on the meaning and applications of the term *zakāh*. This has led to a series of debates and different interpretations by Muslim jurists. Schacht postulates that Islamic thought, concepts, and moral values were partly originated from the Jews and Christians. Schacht's argument, however, has been strongly refuted by Muslim jurists on the ground that the word *zakāh* with the meaning known to the Muslims, occurred frequently in the Qur'ān from early in the advent of Islām in Mecca.¹¹

As far as *zakāh* is concerned, there was some dispute amongst early Muslim scholars on whether the word was commonly used during the pre-Hijrah period to describe a voluntary payment. Subsequently, the problem of enforcing it as a compulsory tax arose, compounded by frequent usage of the word *ṣadaqah* in the

60-62; Abū 'Abd Allah Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, trans. by Dr. Muḥammad Muḥsin Khān, (New Dehli: Kitāb Bhavan, 1980), esp. chapter on *Kitāb Zakāh*, 40:537, p. 310; Hailani Muji Tahir, *Islamic Budgetary Policy: In Theory and Practice*, Unpublished Thesis (University of Aberdeen, 1988) p. 46; *Mishkat al-Masabih*, English translation and commentary by al-Haj Maulana Fazlul Karim (The Book House, Lahore, 1939) p. 36.

⁷ Al-Qur'ān version 6 in CD-ROM.

⁸ The Meccan verses are 7:156; 18:81; 19:13, 31, 55; 21:73; 23:4; 27:3; 30:39; 31:4; 41:7.

⁹ The Medinan verses are 2:43, 83, 110, 177, 277; 4:77, 162; 5:12, 55; 9:5, 11, 18, 71; 22:41, 78; 24:37, 56; 33:33; 58:13; 73:20; 98:5.

¹⁰ Al-Qur'ān, 2:43, 83, 110, 177; 4:77, 162; 5:12, 55; 9:5, 11, 18, 71; 19: 31, 55; 21: 73; 22:41, 78 24: 37, 56; 27: 3; 58: 13; 73: 20; 98: 5.

¹¹ *ET'*, Vol. VIII, pp. 1202-1205; Yūsuf al-Qaraḍawī, *op. cit.*, pp. 36-37.

Qur'ān.¹² Thereafter, numerous occurrences of the terms zakāh and ṣalāh resulted in the interpretation that the correlation denotes compulsory zakāh with strict orders and clear instructions referring to a tax on wealth. The consensus of opinion amongst Muslim jurists such as al-Qurṭubī and Ibn Kathīr, giving equal stress to ṣalāh and zakāh, indicates that both practices are equally fundamental and signify true progress in Islamic society, since the object of zakāh is to remove inequality of the income and to return purchasing power to the poor.¹³

However, in its final form, zakāh in Islām is defined as a compulsory financial obligation imposed on the possessors of certain kinds of wealth,¹⁴ to be levied annually for disbursement to certain specific categories of beneficiaries. However, al-Qur'ān does not determine the minimum wealth which is liable to zakāh, nor does it address the rate of tax applicable to each specific type of property or commodity. But, in various verses, the Qur'ān does specify that wealth, in general terms, is subject to zakāh.¹⁵ Only a few verses specify certain items that come within the definition of wealth¹⁶ which are subjected to zakāh.

¹² *Et'*, Vol. IV, p. 34; *Lisān*, Vol. XII, pp. 61-66. Arthur Jeffrey, *The Foreign Vocabulary of the Qur'ān* (Baroda, 1938), p. 194, Asiah Yaacob, *op. cit.*, pp. 237-246; Yūsuf al-Qaraḍawī, *op. cit.*, pp. 61-66.

¹³ Yūsuf al-Qaraḍawī, *op. cit.*, pp. 61, 96-98. Cf. Majma' al-Lughāt al-'Arabīyah, *Mu'jam al-Alfāz al-Qur'ān al-Karīm* (Cairo, al-Miṣrīyah al-'Ammah li al-Ta'līf wa al-Nashr, 1970), Vol. I, pp. 539-40, Vol. II, p. 66, cited in Hailani Muji Tahir, *op. cit.*, pp. 45, 92; Qurṭubī, vol. II, p. 73, cited in Asiah Yaacob, *op. cit.*, p. 235. Cf. al-Qur'ān, 2:43, 83, 110, 177, 277; 4:77, 4:162; 5:12, 55; 9:5, 11, 18, 71; 21:73; 22:41, 78; 24:56; 33:33; 58:13; 73:20; 98:5.

¹⁴ Property gained through *haram* activity is not liable to zakāh. Examples are wealth obtained through robbery, speculation, or *riba*. Many Muslim jurists, such as Sarakhsī, agreed that wealth of a cruel monarch is not liable since such wealth was exacted from the people. Yūsuf al-Qaraḍawī, *op. cit.*, pp. 131-133.

¹⁵ al-Qur'ān, 2: 276; 9: 103; 51: 19.

¹⁶ al-Qur'ān, 9: 34 for gold and silver al-Qur'ān, 6:141 for agriculture produce and fruits; al-Qur'ān, 2: 276 for treasure troves.

From the time of its formal institution, detailed working procedures¹⁷ were initially derived and formulated from directives of the Prophet to his officials, to the King of Ḥimyar, and from some of the agreements concluded between the Prophet and tribes embracing Islām¹⁸ during the initial development of the religion. For reasons which are unclear, Asiah Yaacob in her thesis concluded, for lack of evidence, that when zakāh payment was made obligatory, it was levied on wealth available to the Muslims in Medina. In this respect, it would be possible that wealth, during that period in question, includes all worldly possessions such as livestock, agricultural and farm produce, commercial holdings, real estate, and bullion.¹⁹

Zakāh Administration as a State Institution

The administration of zakāh during the time of the Prophet and the subsequent two Caliphs, was documented on many occasions as the responsibility of the government.

¹⁷“....If you do well and obey God and His apostle and perform prayer, and pay alms (zakāh), and God’s fifth of booty and the apostle’s share and selected part (ṣaḥf), and the zakāh which is incumbent on believers from land, namely a tithe of that watered by fountains and rain; of that watered by the bucket a twentieth; for every forty camels a milch camel; for every thirty camels a young male camel; for every five camels a sheep; for every ten camels two sheep; for every forty cows one cow; for every thirty cows a bull calf or a cow calf; for every forty sheep at pasture one sheep. This is what God has laid upon the believers. Anyone who does more it is to his merit. He who fulfils this bears witness to his Islam and helps the believers against the polytheists he is a believer with a believer’s rights and obligations and he has the guarantee of God and His apostle. If a Jew or a Christian becomes a Muslim he is a believer with his rights and obligations. He who holds fast to his religion, Jew or Christian, is not to be turned from it. He must pay the poll-tax - for every adult, male or female, free or slave, one full dīnār calculated on the valuation of Ma’āfir (or its value) or its equivalent in clothes.....” Muḥammad Ibn Ishāq, *Sīrah Rasūl Allāh (The Life of Muhammad)*, transl. by A. Guillaume (Oxford University Press, London, 1968) pp. 642-644. Cf. Asiah Yaacob, *op. cit.*, p. 254.

¹⁸During the year 9 A.H, the Prophet sent some of his Companions to different tribes who had embraced Islām. To ensure that the tax was properly administered, the Prophet gave instructions on the rates to be collected from their wealth. Muḥammad Ibn Ishāq, *op. cit.*, pp. 602-617; Abū Sulaymān Ḥamd ibn Muḥammad al-Bustī al-Khaṭṭabī, *Ma’ālim al-Sunan Sharḥ Sunan Abī Dāwūd*, (Dār al-Kutub al-‘Ilmiyyah, Beirut, 1991) Vol. III, p. 31; Asiah Yaacob, *op. cit.*, p. 254.

¹⁹Similar to modern fiscal policy, the imposition of zakāh was not on a blanket basis. Economic and social factors were paramount before deciding to enforce the system. The exemption of horses from zakāh perfectly fits the current situation at that point of time. There were shortages of horses for cavalry unit. This exemption would probably encourage Muslims to own horses. Asiah Yaacob, *op. cit.*, p. 241.

The Prophet's detailed instructions made known in the ḥadīth²⁰ leave no doubt as to the gradual formulation of the structure and procedures governing the character of the zakāh institution. The new system of collection and disbursement of the tax²¹ was later preserved by the first two Caliphs.

Both Quranic injunctions and data provided by the early history of Islām show that the institution of zakāh is meant to function as an organised entity managed by “....those employed to administer the (funds)...”.²² Resulting from this prime divine directive, the Prophet's directives on the administration of zakāh clearly demonstrate that it is the sole responsibility of the state, not shared individually by the payers, as stipulated by the following ḥadīth which is related on the authority of Ibn ʿAbbās:

Umayyah ibn Bistām has related unto us, saying: Yazīd ibn Zurāʾa has related unto us, saying: Rāūh ibn al-Qāsim has related unto us, on the authority of Ismāʿīl ibn Umayyah, (who said) on the authority of Yahyā ibn ʿAbd Allah ibn Saīfī, (who said) on the authority of Abī Maʿabad, (who said) on the authority of Ibn ʿAbbas, when the Messenger of Allah sent Muaʿadh ibn Jabal to Yemen, he said to him: “Thou art going unto a people who possess a Scripture. So let the first thing unto which thou callest them be the worship of Allah. When they have acknowledged Allah, inform them that Allah has made obligatory for them five daily prayers. When they have complied, inform them that Allah has made obligatory for them (the giving of) zakāh, which is to be taken from their wealth

²⁰*Mishkat al-Masabih*, *op. cit.*, pp. 40, 53, 54, 66-67. ʿAlī reported that Zohair said that the Prophet had given instructions to the tax collectors on how to collect zakāh dues. In another ḥadīth narrated by Abu Daud, Tirmidhi and Nisai, Muʿaz reported that when the Prophet sent him to Yemen as a tax administrator, the Prophet gave him some instructions on the tax rates. Numerous other ḥadīths showed that the Prophet had issued detailed instructions to the tax collectors.

²¹The phrase *العاملين عليها* (al-ʿāmilīn ʿalaiḥā) originated from al-Qurʾān (9:60), discussed at length by Muslim jurists, included every member of the entity that administered zakāh. As the third recipient from the eight *aṣnaf*, the ʿāmil role is without doubt the main pillar in the administrative structures of the zakāh system. Cf. Abū al-Ḥasan ʿAlī ibn Muḥammad ibn Ḥabīb al-Māwardī, *al-Aḥkām al-Sulṭāniyyah* (*The Laws of Islamic Governance*), transl. by Dr Asadullah Yate (Ta-Ha Publishers Ltd, London, 1996), pp. 178-185; Abd Ghani Haji Othman, *Peranan dan Kedudukan Amil Zakat dalam Islam*, paper presented at Majlis Perjumpaan dan Penyampaian Tauliah Amil Zakat Fitrah Majlis Agama Islam Wilayah Persekutan, 4/3/1991, pp. 5, 11-12; Jabatan Zakat Negeri Kedah Darul Aman, *Himpunan Risalah-risalah Zakat*, 1997, pp. 1-2.

²²Al-Qurʾān (9: 60, “...Alms are for the poor and the needy, and those employed to administer the (funds)...”); (9: 103, “...Of their goods take alms, That so thou mightest purify and sanctify them; And pray on their behalf. Verily thy prayers are a source of security for them.....”), A. Yusuf Ali, *The Holy Qurʾān*, pp. 458, 470; Jabatan Zakat Negeri Kedah Darul Aman, *op. cit.*, p. 2.

and bestowed upon the needy among them. When they have obeyed the command, levy (the zakāh of their wealth), but beware of taking (as zakāh) the choicest of the people's wealth".²³

This ḥadīth, as pointed out by Yūsuf al-Qaraḍawī, fundamentally became the path to the development of an organised zakāh administration. Ibn Ḥajar al-ʿAsqalānī argues that the government has the right to formulate policies relating to administration of zakāh, as stipulated by the Quranic injunction: "...Of their wealth take alms, That so thou mightest, purify and sanctify them...."²⁴ to the extent that those who fail to comply would be subject to the collection by force.²⁵

Al-Māwardī stipulates that in order to preserve the integrity of the organisation and trust of the taxpayers, the ʿāmil²⁶ to be appointed must satisfy the criteria of certain accountability and responsibility, and have a financial background.²⁷ Further, according to the most manifest opinion of the Shāfiʿītes, if there are two persons given the authority to collect zakāh, i.e. the imam and his representative, it is preferable (*afdal*) to pay the zakāh to the imam himself.²⁸

²³Farishta G. de Zayas, *The Law and Philosophy of Zakat* (Farishta G. de Zayas, Damascus, 1960) p. 281.
²⁴Umar Ibn al-Lutbah was appointed by the Prophet as an official tax collector. Cf. Ṣaḥīḥ al-Bukhārī, *Matn al-Bukhārī Bihāshiah al-Sanadi* (Maktabah al-Nasariah, Cairo, n.d.) Vol I, p. 254; Yūsuf al-Qaraḍawī, *op. cit.*, pp. 545-546.

²⁴Al-Qurʾān, 9:103.

²⁵al-Hafiz Aḥmad ibn ʿAlī ibn Ḥajar al-ʿAsqalānī, *Fath al-Bārī*, Vol. 13 (Beirut: Dar al-Maʿrifah, 138H), 3: 360, cited in Abd Ghani Haji Othman, *op. cit.*, p. 16.

²⁶The term ʿāmil in its generic form applies to all active members of the organisation entrusted to administer zakāh such as the census official, tax assessor and collector, the treasurer, administrators, auditor etc. Abd Ghani Haji Othman, *op. cit.*, pp. 5-11; Cf. al-Māwardī, *op. cit.*, p. 181; Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī Wa Adillatuh* (Dār al-Fikr, Damascus, 1989) Vol. II, p. 870.

²⁷al-Māwardī, *op. cit.*, p. 169. Cf. ḥadīth narrated by Abu Daud and Tirmidhi, from Rafīʿ ibn Khadij, that the Prophet said, "The Zakat Collector who is just like the warrior (*gazi*) in the way of Allah, till he returns to his house" in *Mishkat al-Masabih*, *op. cit.*, p. 67; Jabatan Zakat Negeri Kedah Darul Aman, *op. cit.*, 1997, pp. 2-3.

²⁸Muḥammad Sharbīnī al-Khaṭīb, *Mughnī al-Muḥtāj* (Dar Iḥyāʾ al-Turāth al-ʿArabī, Beirut, 1958) vol. I, pp. 413-414; Shams al-Dīn Muḥammad ibn Abī al-Abbās Aḥmad ibn Hamzah ibn Shahāb al-Dīn al-Ramli, *Nihayat al-Muḥtāj Ila Sharh al-Minhāj* (Dar Iḥyāʾ al-Turāth al-ʿArabī, Beirut, 1992) Vol. 3, p. 137.

Further, the Shafi'ites concur with the concept of zakāh being regulated by the government, unless if the latter is unjust (*jā'ir*) since an unjust government would eventually fail to be accountable and responsible.²⁹ According to Imām al-Nawawī, the role of the government is fundamental because:

- i. Zakāh was regulated by the government during the Prophet's and his successors' time,
- ii. Potential taxpayers, in many cases, are *bakhil* (refused to pay) their tax liability, and
- iii. Some people who owe zakatable wealth did not know what was their responsibility toward their zakāh dues.

Thus, it is the duty of the government to regulate collection and disbursement, and the government also has the right to exercise the option to exact the tax owed by the taxpayers.³⁰

Based on the practices of the Prophet and subsequent two Caliphs,³¹ Yūsuf al-Qaraḍawī contends that Muslim jurists were in consensus that the government is solely responsible for the collection and disbursement of zakāh.³² Nonetheless during the administration of the third Caliph, 'Uthmān ibn Affān, as a result of an aggressive Muslim state expansion policy followed by an overwhelming increase in the state revenues from fay', kharāj, jizyah and ushr, in order to protect the taxpayers' interest against corrupt tax collectors in respect of their non-apparent wealth, had exempted them

²⁹Imām Abi Zakāriyah Yaḥya ibn Sharaf al-Nawawī, *Minhāj al-Ṭālibīn Wa'Umdah al-Muftīn* (Dar Ihya' al-Kutub al-'Arabiyyah, Cairo, n.d.), p. 30. According to the most manifest opinion, it is preferable (afdal) to surrender zakāh dues on property to the government when requested to do so.

³⁰Imām Abi Zakāriyah Yaḥya ibn Sharaf al-Nawawī, *Al-Majmū' Sharh al-Muhadhdhab* (al-Maṭba'ah al-Imām, Cairo, n.d.) Vol. 6, p. 167; *al-Qaraḍawī, Yūsuf, Fiqh al-Zakat*, Malay transl., p. 546; Ibn Ḥajar, *Fath al-Bārī*, Vol. 3, p. 23, cited in *al-Qaraḍawī, Yūsuf, Fiqh al-Zakat*, Malay transl., p. 735.

³¹It worth noting that during the administration of 'Umar Ibn al-Khaṭṭāb, appointed āmils were instructed to collect apparent and non-apparent zakāh from taxpayers to consolidate the position of the Bayt al-Māl and Islamic *takaful*. Cf. Jabatan Zakat Negeri Kedah Darul Aman, *op. cit.*, *Zakat*, 1997, pp. 14-15.

³²Yūsuf al-Qaraḍawī, *Fiqh al-Zakat*, Malay transl., pp. 738-741. al-Qaraḍawī, however, does not specify which Schools of Law these Muslim jurists represented.

from the obligation of discharging their zakāh dues via the state's zakāh mechanism.³³ Caliph ʿUthmān ibn Affān's decision to allow self disbursement of zakāh from non-apparent wealth was based on the premise that rich Muslims at that time were honest toward their divine responsibility.³⁴

Despite the existence of historical evidence of the Prophet's practices, Farishta G. de Zayas concluded that the establishment of the institution of zakāh as an organised entity was not unanimously regarded as necessary by the various schools of Islamic law. In fact, concerning the practical aspect of the institution of zakāh, several legal views have prevailed among the leading Muslim jurists. All Muslim jurists, however, hold that the state has the right to levy and distribute the zakāh generated from both apparent and non-apparent wealth.³⁵

³³Farishta G. de Zayas, *op. cit.*, p. 279. Prior to the era of Caliph ʿUthmān ibn Affān, there was no distinction between the different kinds of property as regards the jurisdiction of the state's zakāh collector to demand the settlement of the taxpayer's tax liability. Thereafter, the Caliph delegated the matter of the settlement of the taxpayer's tax liability to the property owners because he feared that the taxpayers would be subjected to inconvenience caused by the tax collectors. According to the Hanafites, zakatable property could be divided into two categories:

Property	Scope
Non-Apparent (Batinah)	silver, gold and articles of trade held in stock and that have not become apparent by passing through an octroi or a customs post.
Apparent (Zahirah)	Pasturing domestic animals, agricultural produce, and articles of trade that have become apparent by passing through an octroi or a customs post.

Cf. Alā' al-Dīn Abū Bakr ibn Mas'ūd al-Kāsānī al-Hanafī, *Kitāb Badā' al-Ṣanī'* (al-Maktabat al-Ilmiyyah, Beirut, n.d.) Vol. 2, p. 7, on definition of non-apparent wealth; Nicolas P. Aghnides, *Mohammedan Theories of Finance* (The Premier Book House, Lahore, n.d.) pp. 274-275.

³⁴Jabatan Zakat Negeri Kedah Darul Aman, *op. cit.*, pp. 15-16. According to al-Kasani in *Kitāb Badā' al-Ṣanī'*, Muslim jurists had interpreted Caliph ʿUthmān ibn Affān's decision as considering the taxpayer himself to be ʿāmil, functioning on behalf of the government.

³⁵Farishta G. de Zayas, *op. cit.*, pp. 279-280. *Cf.* Jabatan Zakat Negeri Kedah Darul Aman, "Kutipan Zakat dan Agihannya adalah Urusan Ulil Amri (Sultan), Bukan Urusan Individu atau Kumpulan" in *Himpunan Risalah-Risalah Zakat*, 1997, pp. 7-14. However, the Hanafites, following the tradition set by the third Caliph, ʿUthmān ibn Affān, is of the view that discharge of non-apparent wealth may be carry out without intermediation of the state, whilst the Shāfi'ites contended that the state has no right in levy and distribute the zakāh from apparent wealth but if the state knows that the taxpayer has failed to satisfy his tax liability, the state has the right to command the taxpayer to distribute it himself or collect it through the state's mechanism.

Legal Basis of Zakāh on Income from Employment and Vocation

Al-Qur'ān gives no specific guidance to the types of wealth or income that are zakatable.³⁶ As a result, Muslim jurists have had no consensus about the taxability of income generated from employment and vocation (*al-māl al-mustafād*),³⁷ and others disagreed about the basis of hawl (حول) and niṣāb (نصاب).³⁸ Numerous Quranic injunctions³⁹ and ḥadīths,⁴⁰ though not directly addressing the taxability of income generated from employment and vocation,⁴¹ appear to provide a legal basis for

³⁶Jamil Othman, *et. al.*, *Zakat: A Case Study of Malaysia* (Third International Zakat Conference, Kuala Lumpur, 14-17 May, 1990) p. 53.

³⁷Wahiri Mahmud, *Zakat: Peranannya dalam Penyuburan Harta*, (Pustaka al-Mirzan, Kuala Lumpur, 1991) p. 52, cited in Nazihah bt Hj. Shafie, *Cukai Pendapatan dan Hubungannya dengan Zakat Pendapatan Gaji*, (Academic Exercise, Universiti Kebangsaan Malaysia, 1993) p. 57.

³⁸Nazihah bt Hj. Shafie, *op. cit.*, pp. 57-58.

³⁹Al-Qur'ān (2:219), "...they ask thee how much they are to spend, Say: What is beyond your needs...."; al-Qur'ān (2: 267), "...Give of the good things which ye have (honourably) earned..."; al-Qur'ān (9: 103), "...Of their goods take alms, that so thou mightest Purify and sanctify them....". According to Ibnu Arabi, though the word *mākasabtum* refers specifically to zakāh on business, it could be extended to zakāh employment and vocation. Ibnu Arabi, Muḥamad Ibn Abd Allah, *Aḥkam al-Qur'ān* (Dar al-Fikr, Qaḥerah, 1972) p. 235, cited in Wan Zainuzzaman Wan Abdullah, *Zakat Pendapatan: Konsep dan Perlaksanaannya* (Academic Exercise, Universiti Kebangsaan Malaysia, Bangi, 1994/95) p. 11. Cf. al-Qur'ān (51: 19), "And in their wealth and possessions (was remembered) the right of the (needy)...."; al-Qur'ān (47: 38), "Behold, ye are those invited to spend (of your substance) in the Way of God: But among you are some that are niggardly. But any who are niggardly are so at the expense of their own souls"; al-Qur'ān (47: 38), "...In them ; yea, give them something yourselves out of the means which God has given to you....". Cf. Wan Zainuzzaman Wan Abdullah, *op. cit.*, pp. 11-13.

⁴⁰In a ḥadīth narrated by Ibn 'Abbās; when Muaz ibn Jabal was appointed as kathi and 'āmil to Yemen, the Prophet said, "Invite the people to testify that none has the right to be worshipped but Allah and I am Allah's Apostle, and if they obey you to do so, then teach them that Allah has enjoined on them five prayers in every day and night (in twenty-four hours), and if they obey you to do so, then teach them that Allah has made it obligatory for them to pay the Zakat from their property and it is to be taken from the wealthy among them and given to the poor." (*Ṣaḥīḥ al-Bukhārī*, (The Islamic Scholar, Par Excellence, South Africa, 1996) Vol. 2, No. 478. In a ḥadīth narrated by al-Tirmidhi, from Abdur-Rahman Ibn Zaid Ibn Aslam, from his father Ibn 'Umar, that the Prophet said, "Whoever acquires wealth, there is no zakāh therein till a year passes over it (*Mishkat al-Masabih*, *op. cit.*, p. 45). Al-San'ānī narrated more than ten ḥadīths that property is not zakatable until the hawl is satisfied. Cf. 'Abdul al-Razzaq ibn Hisham al-San'ānī, *al-Mūṣannaḥ* (Majlis al-Ilmi, Beirut, 1983) Vol. 4, pp. 75-81.

⁴¹Laws of Malaysia, *Income Tax Act, 1967*, Section 2, p. 16. Cf. Abd. Rashid Dail, "Zakat Gaji dan Pendapatan Bebas", *Islamiyat* (Universiti Kebangsaan Malaysia, Bangi, 1979), Vol. 2, p. 2; Nazihah bt Hj. Shafie, *op. cit.*, p. 58. Section 2 of the Income Tax Act, 1967 (Malaysia) defines employment as a relationship of master and servant subsists; any appointment of office, whether public or not and whether or not that relationship subsists, for which remuneration is payable.

imposition of zakāh on such income.

Historical enquiries have shown that levy of employment zakāh was practised during the early years of the Islamic state. Ibn ʿAbbas reported that zakāh was deducted from a remuneration received by a man. At the same time, Hubairah ibn Yarman reported that Ibn Masʿud had given a person a small bucket and requested a portion of the value of the bucket as zakāh. Imam Malik quoted a report from Ibn Shaibah that Muʿāwiyah had deducted a portion of the gross remuneration of government employees as zakāh payment. Abū ʿUbayd reported that ʿUmar ibn ʿAbdul ʿAziz had enforced the collection of zakāh from salary, remunerations, gifts etc.⁴² ʿAbdul Rahman al-Qurawwi, a tax officer during the administration of ʿUmar Ibn al-Khaṭṭāb, reported that he had been directed to collect zakāh from a gift property (*harta pemberian*) and income from business.⁴³

The imposition of zakāh on employment income, at the rate of 2.5% of the gross income after deducting allowable expenses, and providing that the net income was well above the niṣāb, had been substantiated by Ibn Masʿud, as introduced by Muʿāwiyah ibn Abu Sufyān followed by ʿUmar ibn ʿAbdul ʿAziz.⁴⁴

According to Muslim jurists, employment zakāh might be calculated using one of four methods:⁴⁵

⁴²Al-Sanʿani, Muhammad Ibn Ismail, *al-Musannaf* (al-Maktab al-Islami, Qaherah, 1983) p. 78, cited in Wan Zainuzzaman Wan Abdullah, *op. cit.*, p. 16.

⁴³Yūsuf al-Qaraḍawī, *Fiqh al-Zakat*, Malay transl., Vol. 1, p. 492, cited in Wan Zainuzzaman Wan Abdullah, *op. cit.*, p. 17.

⁴⁴Yūsuf al-Qaraḍawī, *Fiqh al-Zakat*, Malay transl., p. 219, cited in Muhammad Kamal ʿAtiyah, *Perakaunan Zakat : Teori dan Praktis*, Malay transl. by Mohd Nor Ngah, (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1995) p. 124; Nazihah bt Hj. Shafie, *op. cit.*, p. 58; Jabatan Zakat Negeri Kedah Darul Aman, “Zakat Gaji/Wang Simpanan dan Zakat Kumpulan Wang Simpanan Pekerja” in *Himpunan Risalah-risalah Zakat*, 1997, p. 3.

⁴⁵Jabatan Zakat Negeri Kedah Darul Aman, *op. cit.*, pp. 3-6; Ab. Rashid bin Hj. Dail, *Zakat Pendapatan Profesional dan Perolehan (Konsep dan Asas Perakaunannya)*, Intensive Course on Zakat Assessment, 2-7 November, 1987, International Islamic University, Kuala Lumpur, pp. 1-12.

Tax Assessed per annum	Authority
one month of 12 months' remuneration.	This is the opinion of Ibn Abbas, Ibn Mas'ud, Mu'āwiyah, Ja'far al-Sādiq, al-Nāsiq, ḥadīth from 'Umar ibn 'Abd 'Azīz, Ḥasan and Zuhri. These opinions were supported by the Hanbalites. ⁴⁶
1/10th (10%) of gross monthly remuneration, qiyas to agriculture zakāh.	This is the opinion of Ibn Mas'ud, Mu'āwiyah, and ḥadīth from 'Umar ibn 'Abd 'Azīz. ⁴⁷
Tax assessed as agriculture zakāh, subject to niṣāb but no hawl	No authority cited
Tax assessment is tied to the price of gold, subject to niṣāb and hawl.	This is the opinion of Malikites, Shāfi'ites, Ibn Mas'ud, Mu'āwiyah, and ḥadīth from 'Umar ibn 'Abd 'Azīz. ⁴⁸ Niṣāb for gold is 20 mithqāl = 23.2259 mayam = 85 gram. The hawl is one year Hijrah.

Jizyah

Poll-tax (jizyah) before Islām

Al-Qur'ān does not explicitly set out the working procedures of the jizyah tax. Its development must have been adopted from prior eras with suitable modifications to adapt to the essence of Islamic doctrine. The term jizyah itself, according to Shiblī Nu'mānī, was Arabicised from the term 'kizyat' which meant a levy which the Persian emperors used in the administration of war affairs. Shiblī argues further that the term was either in currency in both languages, or the Arabs adapted it from the Persian language and concludes that it is likely that the Arabs first knew about this tax from the Persians.⁴⁹

⁴⁶Yūsuf al-Qaraḍawī, *op. cit.*, pp. 504-509.

⁴⁷*Ibid.*, pp. 504-509.

⁴⁸*Ibid.*, pp. 504-509.

⁴⁹Ziauddin Ahmed, "The Concept of Jizyah in Early Islam", *Islamic Studies*, XIV, (1975), 294; Lane, E.W., *Arabic-English Lexicon*, Book I, Part 1, p. 422.

A tax on individuals is called poll-tax or tribute. It was known to the ancient Greeks, who imposed it on the natives of Western Asia Minor, while the Phoenicians also paid tributes in return for the protection rendered by the Greeks. The Romans imposed a poll-tax in France varying from 4 to 15 dinars per year, on both men and slaves from the age of 14 up to 65, including female slaves from 12 to 65, whilst under the Byzantine Empire poll-tax was imposed on all natives in the territories under its jurisdiction. However, the tax there was levied, not on an individual basis, but on the respective community, leaving it to the prerogative of the members of the community to share the total tax demanded. In Egypt, it was imposed on every citizen between the ages of 14 and 65 with exemption given to a small privileged community.⁵⁰

The Persian government imposed poll-tax on all subjects between the ages of 20 and 50 depending on their ability to bear the tax. However, to ensure their loyalty and fidelity, and guarantee proper performance of their duties, provincial governors, soldiers, civil servants and employees of the Royal Palace were wholly exempted from the tax. The levy ranged from 4 to 12 drachmas. Tabarī records that Anūshirwān, the Persian emperor at the birth of the Prophet, imposed a tax on non-warring subjects for defence purposes, later known as jizyah. In Egypt, the poll-tax was called Jālīya (plural Jawālī), and Abū Yūsuf in *Kitāb al-Kharāj* mentions only 'Jawalī' and not jizyah.⁵¹

It was reported that the poll-tax imposed by the Roman Empire in Byzantium was far higher than the jizyah introduced by the Islamic state.⁵² However, it seems that during the reign of ʿUmar Ibn Khaṭṭāb, jizyah of 48 dirhams was imposed on the inhabitants of al-Ḥīra in the province of al-Sawād including the liability to accommodate each passing Muslim soldier for three days, as a penalty for cheating the

⁵⁰ Jurjī Zaydān: *Tārīkh al-Tamaddun al-Islāmī* (Dār Maktabat al-Hayāh, Beirut, n.d.) p. 219, J. G. Milne, *A History of Egypt under the Roman Rule* (London, 1898) pp. 121-2; al-Sa'adi, *op. cit.*, pp. 61-62.

⁵¹ Iz al-Dīn ʿAlī ibn Abī al-Karam ibn Muḥammad ibn Abdul al-Karīm Ibn al-Athīr, *al-Kāmil fī al-Tārīkh*, (Dār al-Sādir, Beirut, 1979) Vol. I, p. 455; Abū Yūsuf, *Kitāb al-Kharāj*, transl. by A Ben Shemesh, *Taxation in Islam*, vol. III (Leiden, 1969), pp. 21, 35.

⁵² Jurjī Zaydān, *op. cit.*, pp. 169-70; Awang, *op. cit.*, p. 35.

tax administrator Ḥudhayfa in the measurement of the land by saying that the Persians taxed them at 27 dirhams flat-rate. Their answer did not satisfy ʿUmar and he ordered a survey to determine the tax capability of al-Sawād land.⁵³

Jizyah in Islām

As the Islamic state expanded, the proceeds from zakāh were insufficient. The need for additional sources of revenue to sustain the ever expanding state became apparent. Subsequently, apart from fay' (spoils of war) and ghanīma (booty), captured lands gave rise to ʿushr and kharāj taxes, whilst the submission of the dhimmīs to the Islamic state gave rise to jizyah (poll tax) with its working procedures adapted from various prior great civilisations. It is said that the sole verse in which the word *al-jizyah* occurs in the Qur'ān,⁵⁴ was revealed to the Prophet commanding him to attack the Byzantines. However, this claim was rebutted by A. Ben Shemesh who contended that the term jizyah in the above-mentioned verse did not refer to the "poll-tax" which had been an important revenue measure prior to the advent of Islām and there is nothing Islamic about it.⁵⁵

When the fortress of the Banū Qurayẓa was besieged in 5 A.H., the tribe agreed pay jizyah to provide revenue for the Muslims. Similarly, the Prophet used to invite the

⁵³Abū Yūsuf, *op. cit.*, pp. 98-99; Abid Ali Ahmad, *op. cit.*, pp. 70-71.

⁵⁴The institution of jizyah is based on verse no. 29 in Surāh Tawba: "Fight those believe not in Goduntil they pay the jizyah with willing submission, and feel themselves subdued." The term 'subdued' is not used here in a degrading or passive sense, but means obedience to the law of the Islamic state. Shafi'i, commenting on this point, said that being 'subdued' means being brought into the fold of the law. The term *sāghirūn* is employed for those who find themselves in a position of adjectness, while Māwardī said the term imply that by paying the jizyah, it appears the dhimmī acknowledges and confers that he is residing in the Islamic state. al-Sa'adi, *op. cit.*, p. 63; al-Ṭabarī, *Tafsīr*, vol. XIV, p. 198-200; Ziauddin Ahmed, *op. cit.*, p. 294. Cf. *Ṣaḥīḥ al-Bukhārī*, transl. by Muhammad Muhsin Khan (Kazi Publication, Chicago, 1977) Vol. 4, p. 251.

⁵⁵31;Abū Yūsuf, *op. cit.*, p. 20; al-Ṭabarī, *Tafsīr*, p. 200, cited in Awang, *op. cit.*, p.

pagans to accept Islām or to pay jizyah, and ʿUmar put the inhabitants of al-Sawād⁵⁶ under protection after the conquest and let them save their lives by payment of jizyah. After the Prophet and his Companions proceeded to Tabūk in the year 9 A.H./630 A.D. and captured it without any resistance, the Prophet concluded a treaty with the inhabitants stipulating that they pay the jizyah tax. Thereafter, many Christian principalities bordering the Syrian regions concluded similar treaties in which they agreed to pay jizyah in return for protection as to their life, property and religion.⁵⁷

The Prophet also agreed to a peace treaty with the Majūs of Hajar on conditions that they pay jizyah and that the Muslims were not allowed to marry their females or share their food.⁵⁸ Various letters from the Prophet, for instance to the al-Mundhir ibn Sāwi as the Governor of al-Baḥrain,⁵⁹ to Muaʿādh ibn Jabal in al-Yaman,⁶⁰ and to the Byzantine Emperor,⁶¹ dictate a clear policy on the concept of jizyah imposed on the

⁵⁶ Al-Sawād is a "black land" on the Euphrates and Tigris given on account of the contrast to the eye between it and the Arabian desert. Article: Sawād in *EI*, Vol VII (Leiden, 1987) p. 184. Cf. al-Māwardī, *op. cit.*, pp. 247-248; Abū al-ʿAbbās Aḥmad Ibn Jābir al-Balādhurī, *Kitāb Futūḥ al-Buldān* 1st ed. (Al-Maṭbaʿah al-Miṣriyyah, Cairo, 1932) p. 34; Muḥammad Saʿīd Ramadhān al-Būṭī, *Fiḥ al-Sīrah* (Dar al-Fikr, Damshik, 1979) pp. 305-311.

⁵⁷ Abū al-ʿAbbās Aḥmad Ibn Jābir al-Balādhurī, *Kitāb Futūḥ al-Buldān* (*The Origins of the Islamic State*), transl. by Philip Khūrī Ḥitti (Columbia University, New York, 1916) Vol. I, pp. 92-93; Awang, *op. cit.*, p. 31.

⁵⁸ Abid Ali Ahmad, *op. cit.*, p. 260; Abū Yūsuf, *op. cit.*, pp. 63-64, 88-89.

⁵⁹ Musa Ibn 'Uqba related that the Prophet said in the letter, ".....and he who rejects these things shall pay the tribute (poll-tax)". Cf. al-Balādhurī, *op. cit.*, Vol. I, p. 120.

⁶⁰ Yahya Ibn Adam related that the Prophet wrote to Mua'ath Ibn Jabal in Yaman and told him to levy a tax, in cash or in kind, of one dinar on every man or woman who had reached the age of majority. However, he was not allowed to try to convert a Jew from his Judaism. Cf. Yahya ibn Adam, *Kitāb al-Kharāj*, Pt. 3, p. 68; al-Balādhurī, *op. cit.*, Vol. I, pp. 109-110.

⁶¹ Hussein Ibn 'Abdul-Rahman related from 'Abdullah Ibn Shaddah that the Prophet wrote to the Byzantine Emperor saying, ".....If you become a Muslim, you shall enjoy the same rights and obligations as Muslims. If you decline, then you must pay the jizyah as God has ordained....". Abu 'Ubayd, *Kitāb al-Amwāl*, vol. I, p. 30.

dhimmīs.⁶² In its final form, jizyah is a fixed sum of money levied on males of 'ahl adh-dhimma' [Christians and Jews] living in Dār al-Islām with certain exemptions conferred on the Banū Taghlib, the Najrān Christian tribes and some others.⁶³ However a Christian slave released by his Muslim master was not liable to pay jizyah as he was deemed to be under the protection of his master.⁶⁴ However, Abū Yūsuf agreed with Abū Ḥanīfah's opinion that the released slave had to pay jizyah as no dhimmī could be left in the Islamic state without jizyah on his head.⁶⁵

⁶²Examples of treaties concluded with non-Muslim community: 1) Treaty with the Christians of Najrān, 2) Treaty concluded by Khālīd ibn al-Walīd with the Christians of Ḥīrah. 3) Treaty concluded by 'Umar ibn al-Khaṭṭāb with the Patriarch of Jerusalem. Cf. Abid Ali Ahmad, *op. cit.*, pp. 142-144, 288-289; al-Balādhurī, Vol. I, *op. cit.*, pp. 98-101, 213-214; Majīd Khaddūrī, *War and Peace in the Law of Islam* (Baltimore, 1955) pp. 183-184, 214; al-Ṭabarī, *Tārīkh al-Umam wa al-Mulūk*, vol. III, Ed. Muḥammad Abū al-Faḍl Ibrāhīm (Cairo, 1960) p. 609.

⁶³al-Māwardī, *op. cit.*, p. 142; Abū Yūsuf, *op. cit.*, pp. 21, 90-91.

⁶⁴This is the view of al-Sha'bī as related by Ismā'īl ibn Abī Khālīd. Cf. Abū Yūsuf, *op. cit.*, p. 90.

⁶⁵Even though Abū Yūsuf concurs with Abū Ḥanīfah on this matter but he cast his doubt of this opinion by saying "...but God knows best", meaning he is not sure which is the correct view. Cf. Abū Yūsuf, *op. cit.*, p. 90. For further account of the phrase "...God knows best.." Cf. Abū Yūsuf, *op. cit.*, pp. 13-14.

Theory of Jizyah's Imposition

In its early development, jizyah was imposed as a mark of humiliation upon the dhimmīs for their belief because of their continued residency in a Muslim land. It was also the state's due for offering protection to non-Muslims who were not liable to conscription for military service, and for other services and utilities provided by the Islamic state. Thus the jizyah tax on dhimmīs corresponds to the compulsion of zakāh tax on the Muslims.

The payment of jizyah was burdened with humiliating provisions such as stamping dhimmīs' shoulders, cutting hair from their foreheads, wearing of clothes dissimilar to those of the Muslims and other similar practices recorded in many traditions. At this point, it is safe to conclude that nothing indicates that the Prophet or the first Caliph enforced such practices.⁶⁶ It is related that ʿUthman ibn Ḥunayf and Ḥudhayfa ibn al-Yamān, who at the instance of ʿUmar surveyed the lands of al-Sawād then levied the taxes of kharāj and jizyah upon the non-Muslims, and introduced the system of stamping their shoulders.⁶⁷ It was also reported that ʿUmar ibn ʿAbd al-ʿAzīz further added the humiliating practices. The tone of his letter to one of his administrators clearly shows this emphasis:⁶⁸

...It has been reported to me that many of the Christians have again started wearing turbans and have abandoned using waist-belts, and that they are keeping long hair.....

...I swear by my life! If you allow the above practice to continue, it will be an indication of your weakness, inability and hypocrisy. Whenever these people take recourse to such activities, they do so to test your strength. See and do not allow them to perform such act as I prevented them from.

It should be noted that there is no recorded incident of any opposition or resistance to the imposition of jizyah during the Prophet's period or that of the first Caliphs except during ʿUmar's administration. The Banū Taghlib tribe in Syria, on feeling humiliated

⁶⁶Ziauddin Ahmed, *op. cit.*, p. 298.

⁶⁷Abū Yūsuf, *Kitāb al-Kharāj*, pp. 127-28; Abū ʿUbayd al-Qaṣīm ibn Sālam, *Kitāb al-Amwāl* (Dār al-Kutub, Beirut, 1986) pp. 52-54; Ziauddin Ahmed, *op. cit.*, p. 298.

⁶⁸Abid Ali Ahmad, *op. cit.*, pp. 256-257. Cf. al-Māwardī, *op. cit.*, pp. 207-208.

by the imposition of jizyah, refused to accede to this and instead volunteered to pay ṣadaqah at double the rate,⁶⁹ paid in kind, which was set to two ewes for flocks numbering between 40 and 120 sheep, and four ewes if the number exceeds 120 sheep. Under the agreement, females too had to pay jizyah but not minors.⁷⁰ °Amr an-Nākhid related from Dā'ūd ibn Kurdūs that the Caliph °Umar ibn al-Khaṭṭāb made peace with the Banū Taghlib on condition that they paid a double portion of ṣadaqah (jizyah), and provided that they did not prevent their sons from embracing Islam or encourage them to remain outside the Muslim community. The leader of Banū Taghlib agreed to pay and called the payment ṣadaqah (charity) not jizyah, but the Caliph commented: 'It is jizyah all the same, but call it by whatever name you please'.⁷¹ By showing tolerance in this matter, the Caliph avoided a catastrophe that could have resulted in the tribe defecting to the Byzantine forces.

On another occasion, °Ubādah ibn al-Ṣāmit, a Companion of the Prophet, suggested that it would be wiser for the Caliph to accept ṣadaqah, instead of jizyah, from the Ghassanids and thus soften their opposition to Islām with the hope that this would convert them to the Faith.⁷² Imām Shāfi'ī listed two other clans of °Arab Christians, Tanūkh and Buhra, who also protested against jizyah and volunteered to pay ṣadaqah at the double rate.⁷³

⁶⁹ Abū Yūsuf, *op. cit.*, pp. 91-92. Cf. al-Māwardī, *op. cit.*, p. 144; Abū °Ubayd, *op. cit.*, pp. 541-43. However, *El'*, p. 91 reported that Christian groups such as Banū Taghlib and the Christians of Naḍjrān occupy a special position and do not pay jizyah.

⁷⁰ Abū Yūsuf, *op. cit.*, pp. 91-92.

⁷¹ Kamāl al-Dīn Muḥammad ibn °Abd al-Wāḥid al-Siwāsī Ibn al-Humām al-Ḥanafī, *Sharḥ Faṭḥ al-Qadīr °ala al-Hidāyah Sharḥ Bidāyat al-Mubtadī* (Maṭba °ah Muṣṭafā al-Bābī al-Ḥalabī wa Awlāduh, Cairo, 1970) Vol. 1, p. 514; al-Sa'adi, *op. cit.*, p. 72; Yahya ibn Adam, *Kitāb al-Kharāj*, vol. 2, p. 2. Another version says the terms were double payment of jizyah and an end to encouragement of Christianity among the children of the tribe. Cf. al-Balādhurī, *op. cit.*, Vol. I, pp 284-286.

⁷² al-Balādhurī, *op. cit.*, Vol. I, pp 208-210; Abū °Ubayd, *op. cit.*, p. 30.

⁷³ Abū Ya'la Muḥammad ibn al-Ḥusayn al-Farrā', *al-Aḥkām al-Sulṭāniyyah* (Cairo, Ḥalabī, 1357/1938-39), p. 139; al-Shāfi'ī, *Kitāb al-Umm*, VIII: 278-79.

It is evident that whenever ʿUmar faced any discontent amongst dhimmīs taxpayers over the levy of the jizyah, he resorted to non-punitive measures. Based on the precedent of the Ghassanids, it appears that he was trying to protect the possible diminution of the state revenue by directing his policy towards the interest of the state through avoidance of the humiliation that might lead to probable social unrest. As such, jizyah symbolizes the submission of the unbelievers to the suzerainty of Islam.⁷⁴ A. Ben Shemesh⁷⁵ concludes that the motive of jizyah imposition is as a sign of degradation and subjection, which made those who paid it a second-class citizens.

In a later stage of its development, the imposition of jizyah was interpreted in a more liberal sense. Some Muslim jurists interpreted the term 'subdued' in verse 29 Surāh Tawba as not used in a degrading sense, but denoting obedience to the law of the Islamic state. Imām Shāfiʿī, commenting on this point, is of the opinion that being 'subdued' means being brought into the fold of the law. The term *sāghir ūm*⁷⁶ is employed for those who find themselves in a position of abjectness⁷⁷, while Māwardī⁷⁸ said the term implies that by paying the jizyah the dhimmī acknowledges that he is residing in an Islamic state.

⁷⁴ al-Mawardi, *op. cit.*, p. 142; al-Sarakhsī, *al-Mabṣūṭ*, vol. X, p. 77-78; Aghnides, *op. cit.*, p. 397; Sayyid Abul A'la Mawdūdī, *Toward Understanding the Qur'ān*, English version of *Tafhīm al-Qur'ān*, transl and ed. by Zafar Ishaq Ansari (The Islamic Foundation, Leicester, 1988) vol. 3, Surah 7-9, p. 282. Even Imam Mālik convincingly argued that zakāh was imposed on the Muslims to purify them, whereas jizyah was imposed on the People of the Book to humble them. Cf. Mālik Ibn Anas, *al-Muwatta of Imam Mālik Ibn Anas*, trans. Aisha Abdurrahman Bewley, p. 108.

⁷⁵ Abū Yūsuf, *op. cit.*, p. 21.

⁷⁶ For the meaning of the term, see footnote 54

⁷⁷ Muḥammad ʿAlī al-Sābūnī, *Ṣafwah al-Tafāsīr* (Dār al-Qalam, n.d.) Vol. I, p. 531; Ziauddin Ahmed, *op. cit.*, p. 294.

⁷⁸ al-Māwardī, *op. cit.*, pp. 142-143.

ʿUshr

This tax had prevailed in Arabia and the surrounding areas before the advent of Islām. It was imposed by several rulers for a variety of reasons. During the Prophet's time, the term ʿushr was frequently used to mean "customs duties" and other taxes collected from traders, which were strongly denounced by the Prophet and all early religious scholars. The tax collector, known as "al-Āshir", collected ʿushr at the rate of 1/10th of the yield or more.⁷⁹ It was not part of the revenue system of the early Islamic state until Caliph ʿUmar Ibn Khaṭṭāb came to power. This is because there was no need for such a tax in the early stage of the Islamic state.⁸⁰

Obligatory Charge on the Agricultural Produce (Tithe)

The term ʿushr, which does not occur in al-Qurān, has been used by Muslim scholars in a very confusing manner. They do not draw any strict line of distinction between ʿushr and zakāh. The term has been frequently used in the sense of zakāh. Yaḥya ben Ādam and Abū Yūsuf employ the term ʿushr, ṣadaqah and zakāh interchangeably. Yaḥya ibn Ādam, Abū Yūsuf and Abū ʿUbayd contend that ʿushr is a ṣadaqah which was known to be zakāh liable only to Muslims and levied on crops and fruits.⁸¹ On the other hand, Qudāma, who cites Tradition from the Prophet and ʿUmar, declares that Muslims do not pay ʿushr.⁸² Abū Yūsuf refers to the term ʿushr as customs duties but during a briefing to Caliph Hārūn al-Rashīd, he talks about the difference between ʿushr and kharāj lands which clearly refer to land tax. According to *EI'*, the term ʿushr is associated with the term *maks* which was the tax employed in Egypt. *Maks* is associated with market dues

⁷⁹Abū Yūsuf, *op. cit.*, pp. 22-23. Shemesh is even sceptical that ʿushr tax is 1/10th of the yield or produce as it is explained in the Bible.

⁸⁰*EI'*, Article: "ʿUshr"; Abū Yūsuf, *op. cit.*, p. 134; Awang, *op. cit.*, p. 101.

⁸¹Yaḥyā ibn Ādam cites (Q:6: 142)--"And give due portion of it on the day of its harvesting" as referring to ʿushr. Cf. Abū Yūsuf, *op. cit.*, p. 21.

⁸²Abū Yūsuf, *op. cit.*, p. 21, citing Abū ʿUbayd, nos. 1639, 1642. Oxford Dictionary defines tithe as one tenth of the annual produce of a farm, etc formerly paid as a tax to support the clergy and the church. Cf. A.S. Hornby, *Oxford Advanced Learner's Dictionary*, 4th ed., Oxford University Press, Oxford, 1989, p. 1347. Cf. Lane, *op. cit.*, p. 2050 defined ʿushr as the tenth, or by extension of the term in the Muslim law, the half of the tenth (1/20th), or the quarter of the tenth (1/40th).

ranging from tenth (ʿushr) to fifth (*khumus*).⁸³

Some jurists even deemed ʿushr to be zakāh on the produce of the earth, including honey,⁸⁴ because its collection system resembles that of zakāh if the condition of nisāb and a lapse of a year are fulfilled. However, this definition was rebutted by Hanafite’s jurists on the ground that zakāh is an act of worship whilst ʿushr is primarily a financial charge to satisfy the financial need of the government. In addition, ʿushr is levied on landed property owned by minors, insane persons and awqaf. However, Imam Shāfiʿī and Mālikī deemed ʿushr to be an integral part of zakāh on an equal basis. They contended that the specification of the quantity and permanency of the object of zakāh are indispensable.⁸⁵

ʿUshr as Customs Duties

The concept of ʿushr on agricultural produce was changed when ʿUmar came to power. In its early development, the instruction from ʿUmar al-Khaṭṭāb to his tax collectors to collect ʿushr (customs duties) from merchants when they crossed the checking point, in the presence of and acknowledged by the Companions, was deemed sufficient for the act to be considered as a consensus of the Companions. No dissenting opinion was reported when the instruction was issued. The act therefore constituted a legal basis and set a precedent for subsequent Muslim authority to follow its rule. Muslim jurists are of the opinion that there are two legal bases for the imposition of ʿushr; the practice (sunnah) of ʿUmar and the consensus of the Companions.⁸⁶

The tax was imposed as a financial obligation on property which *dhimmī* or

⁸³ Abū Yūsuf, *op. cit.*, pp. 140-143, 82-83; *Elʿ*, p. 316.

⁸⁴ *Al-Hedāyah (Commentary on the Islamic Laws)*, transl. by Charles Hamilton (Islamic Book Trust, Delhi, 1982) pp. 16-17; ʿAbdur Rahman Shad, *Zakāt and ʿUshr* (Islamic Book Service, New Delhi, 1990) pp.74-76.

⁸⁵ It was reported that the Prophet has ordained that there should be no zakāh on less than five *wasq*. *Mishkat al-Masabih*, *op. cit.*, p. 48; ʿAbdur Rahman Shad, *op. cit.*, pp. 74-76.

⁸⁶ Abū ʿUbayd, *op. cit.*, p.474; ʿAlaʾ al-Dīn Abī Bakr ibn Masʿūd al-Kāsānī, *Kitāb Badāʾ ʿal-Ṣanāʾ ʿfī Tarteib al-Sharāʾ ʿfī* (al-Maktabah al-ʿIlmiyyah, Beirut, n.d.) Vol. II, p. 35; Abū Yūsuf, *op. cit.*, p. 141; Awang, *op. cit.*, p. 102.

mustaʿmin used for trade and was transported from one region to another within the Islamic state. The rate was, as a general rule, a tenth, though, for *mustaʿmin*, it might be varied depending on the rule of reciprocal treatment. For the Muslim the tax was deemed to be *zakāh* proper. It was charged on all kinds of trading merchandise such as textiles, livestock, including pigs and liquor, grain etc.⁸⁷ ʿUmar instructed Anas to collect the tax as follows:⁸⁸

Category of Taxpayer	ʿushr tax on Goods / per annum +	Tax in Cash (gold) for every 200 dirhams
Muslim	1/4th of the tenth=2.5 % +	5
Dhimmī	1/2 of the tenth=5% +	10
Ḥarbī	tenth=10% +	20

⁸⁷The rate was set depending on each case such as naturally irrigated or artificially irrigated land. Abū Yūsuf, *op. cit.*, pp.132, 140-141. Cf. al-Sarakhsī, *Kitāb al-Mabsūʿ* (Cairo, 1324), vol. II, p.199, cited in Awang, *op. cit.*, p.100

⁸⁸Abū Yūsuf, *op. cit.*, pp. 141-142; Abid Ali Ahmad, *op. cit.*, pp. 267-268.

Kharāj

Secular Form of Kharāj

Agriculture was the main economic basis of ancient civilisations. As a result, a tax system on land or land produce had been the main source of revenue of several states prior to the advent of Islām. It is for this reason, perhaps, that some writers have claimed that the term *kharāj* is not Arabic, but derives, via the Syriac, from the Greek.⁸⁹ Yaḥya ben Ādam (d.203/818) said, "But this our Sawād--we heard--was in the hands of the Nabaṭ who had been subjugated by the Persians to whom they paid *kharāj*. The Muslims, when they defeated the Persians, left Sawād and those of the Nabaṭ and Dihqāns who had not fought the Muslims, in the same position; they imposed *jizya* on the heads of the men, surveyed the land in their possession and charged *kharāj* on it. Any land not possessed by anyone was seized as Ṣawāfī (State land) of the Imām".⁹⁰

Ibn al-Athīr, reporting in a more specific manner on the collection procedure for *kharāj*, observed that the Persian kings before Anūshirwān had levied *kharāj* on the product of their territory with varying tax rates; namely, 1/3rd [33.3%], 1/4th[25.0%], 1/5th[20.0%] and 1/6th[16.7%] respectively depending on the irrigation and prosperity of the land.⁹¹ Before Anūshirwān, the tax, apparently fair in principle, had been proportional to the harvest. However, this method of assessment had proven unjust because the taxpayer's harvest would rot while he was awaiting the arrival of the tax assessor to assess the harvest and impose a proportional tax. To remedy this, Anūshirwān ordered the respective lands to be surveyed and divided them into unit areas called *jarīb*. He then imposed tax as follows:⁹²

⁸⁹*EP*, Article: "Kharāj" by C.L. Cahen.

⁹⁰Yaḥya Ben Ādam, *op. cit.*, pp.26-7.

⁹¹Ibn Athīr, *op. cit.*, p.455; Awang, *op. cit.*, p. 74. According to Dennett, the Muslim tax system of *kharāj* applied in al-Sawād during the early years of the Muslims administration was virtually the same as the Persian. D.C. Dennett Jr., *op. cit.*, p. 14.

⁹²*Ibid.*, pp. 14-15. One *jarīb*=2400 m².

Agricultural Products	Tax per jarīb per annum (dirhams)
Grain land, four date palms or six olive trees	1
Vineyard	8
Alfalfa	7
Other agricultural products and isolated fruit trees not part of an orchard	Exempted

It was also reported that the Byzantine empire depended largely on land tax. The farmers in the Byzantine reign had to pay land tax both in kind and cash.⁹³

Various Interpretations of the term Kharāj

As in the case of *‘ushr*, some writers⁹⁴ in their religious books had shown some degree of non-understanding of the concept of taxation when they used the expressions *jizyah* and *kharāj* interchangeably. For instance Abū Yūsuf used to describe phrases as "jizyah on their lands and kharaj on their heads". Yahyā referred to *kharāj* as land tax, but sometimes used it as a name for general tax. Other Muslim scholars referred to it in its original meaning: general tax. Abū Yūsuf, Yahya ben Ādam and Qudāma ben Ja'far used *tasq*, *‘ushr* [tithes], *jizyah* and *kharāj* as synonyms.⁹⁵ For the purpose of this inquiry, the term *kharāj* will be used to refer to a land tax⁹⁶ formulated from the the *itjihad* of ‘Umar which later became the consensus (*ijma‘*) of the Prophet's Companions.⁹⁷

⁹³Muḥammad Diyā' al-Dīn al-Rays, *al-Kharāj wa al-Nuzum al-Māliyyah lī al-Dawlah al-Islamiyyah* (Cairo, 1961) pp.46-7, cited in Awang, *op. cit.*, p. 74.

⁹⁴Dennett, *op. cit.*, p. 9. According to Dennett, "Since we are talking in terms of history, not philosophy the problem is not what the taxes were called, but what they were."

⁹⁵Yahya Ben Ādam, *op. cit.*, p. 6.

⁹⁶This is the views of Ibn Manzūr, *Lisān al-‘Arab*, II, pp. 251-52, cited in Awang, *op. cit.*, p. 72; Lane, *op. cit.*, p. 719; Hossein Modarressi Tabātabā'ī, *Kharāj in Islamic Law* (London, 1983) p. 2.

⁹⁷Abū Yūsuf, *op. cit.*, pp. 20, 28; mentioning such phrases as "jizyah on their lands and kharaj on their heads". Cf. al-Sarakhsī, *al-Mabṣūṭ*, vol. X, p. 79. El¹ defined *jizyah* as a tribute, poll-tax that is interrelated with the holy war. Cf. El¹, p. 91; Abū ‘Ubayd, *op. cit.*, pp. 59-62.

Practices during the Prophet's and Abū Bakr's Era

As aforementioned, during the administration of the Prophet and Abū Bakr, the aftermath of the expansion of the Islamic state often resulted in booty and captured lands. The practice had been that the captured land and the booty were divided among the victorious participants. Each would have his own share depending on the degrees of his participation and contribution to the battle. For instance the cavalry division riding on horses or camels were allocated more than the foot soldiers unless they voluntarily waived their greater shares.⁹⁸

During the administration of the Prophet, a few types of *kharāj* were imposed on ad-hoc basis.⁹⁹ When Khaybar and Wādi al-Qura, inhabited by the Jews, were conquered in 7 A.H., the Islamic state had to face the problem of a shortage of manpower and agricultural experience to exploit the lands successfully. The ex-owners of the lands asked the Prophet to let them continue to cultivate the lands, which the Prophet agreed to on condition that they surrender 50% of the crops at harvest to the Islamic state.¹⁰⁰ In both instances, the inhabitants had chosen to fight and were defeated. The properties taken by the Muslims in battle were deemed "spoils of war". The Prophet divided the movable assets and left the lands and homes for the Jewish survivors on the basis of payment of 50% of the crop from the palm groves.

In the year 9 A.H. the Prophet concluded similar agreements with the Jews of Fadak and Maqna. The people of Fadak suggested an arrangement for crop-sharing when they received a Muslim delegation for peace-talks. The revenue generated from the crop-sharing was then distributed to those in need of social security benefits. The Prophet also concluded an agreement with the inhabitants of Maqna in return for 1/4th of their annual revenue and of the spun textiles produced by their women in return for

⁹⁸Abid Ali Ahmad, *op. cit.*, p. 44

⁹⁹Abū Ḥanīfah and the Hanafites are of the opinion that a taxpayer is not liable for both *kharāj* and *zakāh*. Cf. Abū al-Abbās Aḥmad Ibn Jābir al-Balādhurī, *Kitāb Futūḥ al-Buldān (The Origins of the Islamic State)*, transl. by Francis Clark Murgotten (Columbia University, New York, 1924) Vol. II, p. 237.

¹⁰⁰al-Saadi, *op. cit.*, p. 91; Abū Yūsuf, *op. cit.*, p. 103; al-Balādhurī, *op. cit.*, Vol. I, pp. 42-49, 57-59.

the exemption from poll-tax or forced labour.¹⁰¹

Formative Era of Kharāj--Land Tax Reform

During ʿUmar Ibn al-Khaṭṭāb's administration, al-Sawād (Iraq) was conquered under the leadership of Khālīd Ibn al-Walīd. Khālīd gave the governor of Iraq three choices: conversion, payment of tribute (jizyah), or the decision of war. The campaign in Iraq was not to overthrow the Sassanid Empire but merely a raiding expedition. The Muslims had not thought of setting up a permanent administration, and had no plan for dealing with the peasants and estates outside the towns which they had conquered. Khālīd demanded a sum of 6,000 dirhams and the tax collectors elected by the inhabitants were responsible to submit this amount to the Islamic state.¹⁰²

Kharāj was initially a product of the decision and ijtihād of ʿUmar upon the advice of the Companions. It all started when ʿUmar wished to divide the lands after al-Sāwad was captured by force. However when ʿUmar arrived at al-Jābiyah declaring his intention to divide the land, ʿAlī ibn Abi Ṭālib and Muʿādh ibn Jabal advised him to adopt a different course of action.¹⁰³ Muʿādh's words convinced ʿUmar of the need to look further into the issue, and he reflected on the words of the Qur'an¹⁰⁴ which make it clear that division of land was intended to deal with existing as well as future problems. At the outset, ʿUmar's proposal had provoked discord among the Companions of the Prophet. Finally, ʿUmar managed to convince them after a prolonged consultation.

¹⁰¹ al-Balādhurī, *op. cit.*, Vol. I. pp. 50-56, 92-94.

¹⁰² The 60,000 dirhams was calculated from 6,000 men after giving exemption on those without means and dependent on public charity. For legal precedent, Khālīd has Al-Qur'ān, 9: 29 and he had also the example of the Prophet who had made terms with Yuhann ibn Ru'bah on the basis that the tax rate of one dīnār on each head would be paid annually. Cf. Dennett, *op. cit.*, p. 17-18.

¹⁰³ Muʿādh said to ʿUmar: " By God, there shall occur what you dislike. If you divide the lands as they ask you, enormous rents shall fall into their hands; but since there is a high risk of their death (being soldiers) huge fortunes may pass to widows or single child families. Meanwhile many children will be born to parents with no land to bestow on them. Would it not be more wise to adopt a mode of behaviour that would secure reasonable lots of land for everyone." Cf. al-Sa'adi, *op. cit.*, p. 100; al-Balādhurī, *op. cit.*, Vol. I. pp. 233-234.

¹⁰⁴ These verses were cited in ʿUmar when they insisted on the division of the lands. Cf. al-Qur'ān, 59: 6-10, pp. 1523-1524. Abdullah Yusuf Ali is of the opinion that the phrase "Belongs to God" of verse 7 literally relates to share which is not fixed.--they depend upon circumstances, and are left to the judgement of the leader. Cf. also D.C. Dennett Jr, *op. cit.*, p. 21,

This conflict of opinion and resulting discussions are recorded by many historians and jurists as well as in many literary works.¹⁰⁵

ʿUmar's decision not to divide the land was based on the phrase "those who came after them"¹⁰⁶ which he interpreted as against division and distribution of land which would deprive the state of the revenue necessary to sustain recurrent expenditures such as payment of pensions, payment of social security to the poor and orphans, and posterity. However, Dennett quoted that Martin Hartmann severely criticised this passage. In his opinion the verb أَفَاءَ (afā 'a) refers not to fay' in the sense of the Muslim jurists --that is, to the income from land and poll tax--but to movable booty, and while verses 6-8 of the relevant surah relate to this booty, verses 9-10 deal with an entirely different subject--namely, the relation of the Anṣār at Medina to the Muhājirūn. Hartmann added that ʿUmar either deliberately or through misunderstanding quoted scripture falsely, to his own purpose, or the story was a later invention.¹⁰⁷

Since ʿUmar's ijtihād had been approved and agreed by the Companions of the Prophet, except for a few such as Bilāl and ʿAbd al-Rahmān ibn ʿAwf,¹⁰⁸ ʿUmar had in effect invoked a land reform and revamped the existing practice of distributing conquered lands amongst the participants of the war. Apart from a collective decision in the case of kharāj, ʿUmar had set a new precedent regarding the conquered lands which constituted a clear policy for subsequent Muslim rulers in dealing with lands acquired by force. The concept of kharāj promulgated by ʿUmar is manifested in the

¹⁰⁵For the full account by Abū Yūsuf regarding the conflict, see Abū Yūsuf, *op. cit.*, pp.79-80; Abid Ali Ahmad, *op. cit.*, p. 42-43. Cf. Dennett, *op. cit.*, pp. 20-22.

¹⁰⁶Al-Qur'ān, 59: 10.

¹⁰⁷Martin Hartmann, "Zur Wirtschaftsgeschichte des ältesten Islams", *Orientalische Literatur Zeitung* (Berlin), Vol. VII (1904), No. II, pp. 414-45, cited in Dennett, *op. cit.*, pp. 7, 21.

¹⁰⁸The military personnel who had undertaken the conquests had suggested that they were entitled to a share in the lands captured as part of their spoils of war, under the terms of the decision of the Qur'ān: "And know that out of all the booty that ye may acquire(in war), a fifth share is assigned to God,--and to the Apostle, and to near relatives, orphans, the needy, and the wayfarer,--if ye do believe in God and in the revelation we sent down to our Servant on the Day of Testing,-- the Day of all meeting of the two forces. For God hath power over all things". Cf. al-Qur'ān, 8: 41; al-Sa'adi, *op. cit.*, p. 99.

interest (*maṣlahah*) of the ummah as well as consensus (*ijmāʿ*).¹⁰⁹

In another incident, when the armies which captured al-*Irāq* approached ʿUmar Ibn al-Khaṭṭāb, through Sa'd ibn Abī Waqqās, concerning their rights on the booty, ʿUmar consulted the Companions of the Prophet about the establishment of the *Dīwān* offices for the payment of pensions to soldiers. Previously, in the time of Abū Bakr, all soldiers received equal pensions, but after the conquest of al-*Irāq*, the question of priorities arose and the general consensus of opinion was that a priority system should be introduced. A majority of the Companions of the Prophet agreed after ʿUmar had said:¹¹⁰

“..I thought, however, that I should not distribute the lands with their tenants, but rather leave them as a trust and impose on the lands the *kharāj* tax and on the men the *jizyah* to constitute a permanent income for the Muslim soldiers, their children and future generations...”

ʿUmar's rationale for his decision to give priority towards public interest (*maṣlahah*) was quite understandable. As the Islamic state expanded aggressively with mounting recurrent expenditure the state had to sustain with the introduction of pensions schemes and a social security system, he foresaw that future generations of the Islamic state would eventually face difficulty in sustaining stable government without sufficient revenues. This concept is clearly reflected in ʿUmar's words: "What about the future generations of Muslims who will find that all distributed, occupied and inherited? No, this is not a good advice".¹¹¹ There is a report attributed to ʿUmar to have said, “If it is not for later generations, I would distribute every town (place) that I have conquered as the Prophet had done to Khaybar. But I would rather leave it as a treasure so that they

¹⁰⁹Dennett, *op. cit.*, p. 21; al-Māwardī, *op. cit.*, pp. 248-249.

The preservation of the conquered lands for the future interest of the ummah is reflected in ʿUmar's letter to Sa'd, as related by Abū Yūsuf in the name of Yazīd ibn Abī Habīb, “....For, if you apportion the lands amongst those present, nothing will be left for future generations...” Abū Yūsuf, *op. cit.*, p. 79. According to Dennett, whether or not ʿUmar did recite these verses is a matter of no great weight; whatever his reasons, his decision in the interests of the ummah is paramount, the land of al-Sawād should be an inalienable property of the Islamic state. The evidence on this point is complete, precise, and voluminous.

¹¹⁰Abū Yūsuf, *op. cit.*, pp. 79-80.

¹¹¹*Ibid.*, p. 79.

can share it".¹¹² When ʿAmr conquered Egypt, al-Zubayr demanded that the lands be distributed. ʿAmr refused to distribute until he received an instruction from ʿUmar who then declined the demand. Abū ʿUbayd in upholding ʿUmar's decision contended that ʿUmar wanted it to be a trust for the Muslims to be inherited from generation to generation so that it becomes a source of strength for them.¹¹³

Without doubt the practice of distributing conquered lands would eventually lead to economic disparity since the wealth would circulate only among the participants of the war, with the cavalry division getting the lion's share and those not involved in the war would remaining in hardship. Such a situation would also be incompatible with the essence of al-Qur'an which says: "That which Allāh giveth as spoil unto His messenger from Allāh and his messenger and for the near of kin and the orphans and the needy and the wayfarer, that it become not a commodity (circuit) between the rich among you."¹¹⁴ In conjunction with this essence of this verse, when Muʿādh ibn Jabal sees some Companions pestering ʿUmar to distribute the lands, he says to ʿUmar, "By God! then it would happen what we do not like. If you divide the lands, its incomes (benefits) will fall in the hands of a few. Then later people come, who would need some help, but find nothing. Therefore, look for an alternative that would accord both the first and the later generations."¹¹⁵

ʿUmar's decision that conquered lands should remain in constant use, whether cultivated or not, by their previous owners, who claimed more experience and familiarity with the land and were efficient in working it, was clearly a revenue measure¹¹⁶ as

¹¹² Abū ʿUbayd, *op. cit.*, p. 59; Cf. Muḥammad ibn ʿAlī ibn Muḥammad al-Shawkānī, *Nayl al-Awṭār* (Cairo, 1938) Vol. VIII, p. 13.

¹¹³ Abū ʿUbayd, *op. cit.*, p. 60.

¹¹⁴ Al-Qurʾān, 59:7

¹¹⁵ Abū ʿUbayd, *op. cit.*, p. 61.

¹¹⁶ Abū Yūsuf, *op. cit.*, p. 103. ʿUmar says, "They would be land's developers, they have more experience and are more energetic."

explained by Abū Yūsuf,¹¹⁷

"Umar's decision not to distribute the lands amongst those who captured it was guided by God from what is written in His Book. It was of benefits to all Muslims. His decision in collecting kharāj and distributing it amongst the Muslims was of a general interests for the public. For, had it not been for making a trust to be used for the payments of pensions and wages, there would be no troops in the frontier settlements, no sufficient armies to march for jihād, and no security against the recapture of their towns by the armies. But God knows best."

Umar's aforementioned decision was based on the Quranic injunctions¹¹⁸ and the negative aftermath of the distributions. According to him, if the lands had not been nationalised for charity and provisions for the people, it would be impossible to defend the frontiers and to provide sustenance to the troops that enable them to march for jihād.¹¹⁹

The Introduction of al-Muqāsama System--Proportional Kharāj

The fixed rates kharāj tax system had been in use until Abū Yūsuf's time. When the latter was directed by the Caliph Hārūn al-Rashīd to write the Islamic tax code, he thoroughly investigated the taxation system that had been practised in al-Sawād. Under

¹¹⁷Abid Ali Ahmad, *op. cit.*, pp. 49-50, 65. "But God knows best" is Abū Yūsuf's expression of his uncertainty of the exact rationale in this situation. Abū Yūsuf also described the disagreement amongst the majority especially Bilal ibn Robah on the issue of distribution. al-Sa'adi, *op. cit.*, p. 103 reported that this episode is mentioned in many varied sources including al-Balādhurī, *Kitāb Futūḥ al-Buldān*, p. 265; Ibn al-Jauzi, *Kitāb Umar Ibn al-Khaṭṭāb*, pp. 122-3; Abū Ubayd, *Kitāb al-Amwāl*, p. 273; M. Kurd Ali, *Khitat ash-Sham*, vol. 3, p. 53; al-Ṭabarī, *Tarikh al-Umam wa al-Muluk*, vol. 2, p. 183.

¹¹⁸Abū Yūsuf gave the Quranic verses which Umar based his decision: i) Al-Qur'ān, 59:6 which says: "Whatever Allah has given to his Prophet from them, ye urged not any horses or riding camel for the sake, thereof, but Allah makes His apostles dominant over whom he likes, and Allah is Powerful over everything." ii) Al-Qur'ān, 55:7 which says: "Whatever Allah has given to His Prophet from the people of the towns that will belong to Allah and the Prophet and the near of kin and orphans, the needy and the wayfarer, so that the wealth could not circulate amongst the rich from amongst you: Whatever the Prophet gives you take it and abstain from that which he has forbidden you." iii) Al-Qur'ān, 59:8 which says: "(It is) for those poor men who have immigrated and who have properties to seek the bounty of Allah and His pleasure and who help Allah and His Prophet. These are the truthful ones." iv) Al-Qur'ān, 59:9 which says Those who resided in the abode and affirmed faith before them, love those who have immigrated to them and they do not find any need in their hearts regarding that which they have been given and they preferred them to their ownselves, even if they suffer from want and whoever has been saved from the miserliness of his self such are those who prosper." v) Al-Qur'ān, 59:10 which says: "Those who came after them they say: O our Lord, pardon us and our brethren who have preceded us in belief, and do not put a grudge in our hearts for those who belief. O' Our lord, You are kind and Merciful." Cf. Abid Ali Ahmad, *op. cit.*, pp. 48-50.

¹¹⁹*Ibid.*, p. 50.

this system, for the purpose of simplifying the task of assessing the tax, cultivated and uncultivated land were categorised as one and ʿUmar imposed kharāj on it. The government's intention was crystal clear: to promote cultivation which would necessarily increase the revenue generated by al-Sawād, by forcing the farmers of uncultivated lands to develop and cultivate them.¹²⁰

On the other hand, during Abū Yūsuf's time, uncultivated lands were abundant. As the costs of investment to revive these lands were beyond the means of the farmers, the lands were left uncultivated. Abū Yūsuf believed that if the same tax procedure was employed, the negative effect on the revenue generated would be significant. In conclusion, Abū Yūsuf found that a rate of tax imposed of a fixed measure of crops or a fixed amount of dirhams, at the discretion of the tax collector, had its defects for the government and the taxpayers itself. Abū Yūsuf was of the opinion that the current system provided opportunities for the occurrence of unjust distribution of the taxes and the oppression of the weak by the strong, and other bad effects which are too numerous to mentioned.¹²¹

To correct the situation, Abū Yūsuf suggested a proportional share-tax system of taxation known as al-Muqāsama¹²², which he claimed would benefit the government

¹²⁰Abū Yūsuf, *op. cit.*, pp. 100-102. ʿUmar enforced this system based upon the recommendations of Ḥudhayfa and ʿUthmān ibn Ḥunayf who were the tax administrators of the said lands. They confirmed that the lands could bear the proposed rate of tax. When they had increased the tax rate by imposing twice the previous rate of tax, they found that there was still a surplus for the farmers. Abū Yūsuf then discussed the matter and sought the opinions of the experts on this method of taxation. Every one expressed the opinion that this tax procedure was legal.

¹²¹*Ibid.*, pp. 100-102; Abid Ali Ahmad, *op. cit.*, pp. 91-93.

¹²²The prevailing kharāj system constituted a fixed sum paid by the taxpayers but al-Muqāsama tax system which was initially the brainchild of Abū ʿUbayd Allāh who had used the Khaybar tradition-precedent as a religious basis for the reintroduction of the ancient pre-Islamic propotional tax system. It worth noting that the Prophet had allowed the conquered Jews of Khaybar to cultivate their previously owned lands and orchards on condition that they delivered to him a proportion, 1/2 and 1/3rd respectively, of the produce. Abū Ḥanīfah denied the validity of the Khaybar tradition as a legal religious basis, but his contemporary Muḥammad ibn ʿAbd Raḥmān Ibn Abī Layla upheld it. Abū Yūsuf, who was a disciple of both, recorded this controversy and remarked that the majority of scholars were opposed to Abū Ḥanīfah's view but surprisingly Abū Yūsuf himself was not sure whose opinion was correct. Cf. Abū Yūsuf, *op. cit.*, pp. 15-16; Abid Ali Ahmad, *op. cit.*, pp. 96-97; Yaḥya Ben Ādam, *op. cit.*, pp. 3-4. al-Balādhurī in *Kitāb Futuh al-Buldan* reported that ʿUmar taxed al-Sawād by the system of fixed kharāj, while the Caliph al-Mahdi introduced the proportional kharāj. Cf. D.C. Dennett, p. 11.

and alleviate injustice to the taxpayers, as follows:¹²³

Agricultural Products	Proportional Tax Rate per gross yield
Wheat and Barley	2/5 or 40% [naturally irrigated]; 1 1/5 or 30% [artificially irrigated]
Palms trees, Vines, Vegetables and Orchards	1/4 or 25% if harvested in summer; 1/3 or 33% if harvested in other seasons

Bonné generalises the kharāj tax on the yield of the soil amounted to between 20% and 50 % of the gross yield, according to the quality of the land. In addition, the kharāj was also levied as a tax on area.¹²⁴

The proportional share is calculated based on a just appraisal. What is due should be taken in kind, but if it is convenient to both parties, the yield may be sold at arm-length transaction and the revenue generated be divided accordingly as specified by the government.¹²⁵

¹²³ Abū Yūsuf, *op. cit.*, p. 101.

¹²⁴ Bonné, *op. cit.*, p.9; Ziaul Haque, *Landlord and Peasant in Early Islam --A Study of the Legal Doctrine of Muzāra'a or sharecropping* (Islamic Research Institute, Islamabad, 1977), p. 169. Cf. D.C. Dennett Jr., *op. cit.*, p. 14. It is interesting to note that before the administrative changes of the Persian Kings Qubād and Anūshirwān in the sixth century, the land taxes and rents were levied as a percentage of the agricultural produce which ranged from 1/6rd to 1/3th [16.6% to 33.3%] of the crop according to fertility and irrigation of land.

¹²⁵ Abū Yūsuf, *op. cit.*, p. 101.

Chapter Two

The Development of Indirect/Direct Taxation



On 22nd March, 1765, the British Parliament passed the Stamp Act, the first direct tax imposed on the American colonies. This gave rise to the slogan “No taxation without representation” and many protests. This engraving shows colonists burning stamps in protest.

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Chapter 2

Part I--Revenue System of the Malay Sultanate

Structure of Revenue System of the Malay Sultanate

Under the Malay Sultanate system based on the practise in Malacca, the Sultan stood at the apex of the political structure with several important office bearers and supporting chiefs.¹²⁶ There was in reality no centralised administration¹²⁷ in the Malay states, and the state treasury was under the prerogative of the Sultan. Each Sultan maintained his position by keeping an uneasy balance between the major chiefs, equivalent to the “divide and rule” commonly employed by any Colonial administration. The Sultan exacted what taxes he could which were then used to suppress the power and influence of the territorial chiefs so that their power would be diluted¹²⁸ whilst at the same time, the Sultan depended on the territorial chiefs for both administration and defence of the state.

Prior to 1874, the native inhabitants of the Malay Peninsula were primarily wet-rice agriculturists, fishermen and seafarers. As such, the economic resources of the Sultan and territorial chiefs were extremely varied but limited to two principal sources

¹²⁶In most Malay states, the constitution and ceremonial of the Court, the titles and functions of the officers, were influenced and borrowed from Malacca Sultanate form of government. The titles and administrative functions were closely associated with the local rights of taxation and control. See Emily Sadka; *The Protected Malay States 1874-1895*, pp. 11-12; Appendix 1(The Perak Constitution), pp. 382-385.

¹²⁷As the Malay Sultanate system of government reached the saturated stage, before the development of a centralised government, eventually the system could not cope effectively with the increasingly complicated political, economic stresses and strains to be met in the 19th century world. This had led to political instability in the Malay peninsula in the middle of 19th century, whose main culprits were disputes amongst Chinese miners and the intra-Malay disputes amongst the royal families and Malay chiefs

¹²⁸Fratricidal quarrels broke out in Perak, Negri Sembilan and Pahang, and there was anarchy in Selangor. See R.O. Winstedt, *Malaya and Its History*, pp. 62-67; N.J. Ryan; *The Making of Modern Malaysia and Singapore*, pp. 130-133.

of revenue: services exacted from slaves, bondsmen and *kerah* levies, and taxes on production and trade. As a general rule, cultivation for subsistence was not taxed, nor was a capitation tax generally exacted. The territorial chiefs, who were bestowed titular honours by the Sultan¹²⁹, not only administered great areas of territory but also collected taxes and had their own private armies. Since most Malay states were primarily built along the rivers and the main communication was through the river, it makes sense that their sources of revenues were the collection of custom duties at the mouth of the rivers,¹³⁰ from loyal territories and from gifts.¹³¹ Territorial chiefs had their own customs stations on their stretches of river; according to one British observer, "every chief in his own place took something". In some instances, collection rights were leased to other Malays, or to Chinese or Europeans; others were entrusted to agents who collected on a commission basis, so that revenue collection ramified endlessly and gave profit to large numbers.¹³² Under this tributary system, it was possible the same commodities

¹²⁹The title was bestowed in recognition of local influence and was usually closely associated with local rights of taxation and control, which consolidated the chief's influence in his territory. See Emily Sadka; *The Protected Malay States 1874-1895*, p. 12.

¹³⁰For instance, in the account of timber sawing at Teloh Ipil, The Panglima Besar imposed custom duty, on behalf of the Sultan, 40 or 50 cents per log or 25 cents if the log was not squared. PCM, 27 June 1878 in R.J. Wilkinson; *Papers on Malay Subjects -1907-1916*, pp. 169-170. In Malacca Raja Kasim took the name Sultan Muzaffar Shah after he murdered his brother with the collaboration of a Muslim sea-captain who was a trader because the murdered Ruler alienated the Muslim traders by ordering an increase in taxes and tolls on shipping from the Coromandel coast. See Francis Joseph Moorhead, *A History of Malaya and her Neighbors*, Vol. I, p. 130; "The Sejarah Melayu", *JMBRAS*, Vol. XXV, Parts 2 and 3, October, 1952, p. 62-63, cited in C.A. Majul, "Theories of the Introduction and Expansion of Islam in Malaysia", *Silliman Journal*, Vol. XI, No. 4, 4th Quarter, 1964 (Silliman University, Philippines).

¹³¹Their livelihood were based on rice cultivation which was their staple food. Fruit, vegetable gardens and coconut plantations provided other elements in their diets. Coconut products and bamboo provided most of their household utensils. Housing materials such as timber and thatch, rattan and bamboo were extracted from the wild jungle. These jungle products were exported and the most important export were the tin and gold. This sustained a trade cycle where the trade was balanced by the import of trade goods, mainly textiles, ironware, tobacco, salt and opium. See Emily Sadka; *The Protected Malay States 1874-1895*, pp. 6-11.

¹³²An account of the Perak Constitution c. 1874 is given in R.O. Winstedt, "History of Perak", *JMBRAS*, Vol. xii, Part 1 (1934) pp. 119-76, Appendixes A-K. The title, genealogies, functions and revenues of the chiefs are given in Appendix D, pp. 134-58. The Perak Constitution and The Perak Revenue System are also quoted as Appendix 1 by Emily Sadka; *The Protected Malay States 1874-1895* (University of Malaya Press, Kuala Lumpur, 1968) pp. 382-386. For detailed revenue system in Perak prior to British intervention, see Mohammed Ibrahim Abdullah, *Kesah Pelayaran Abdullah*, Johore, 1956, pp.

were subject to multiple taxation when they passed through different territorial jurisdictions on their way to final destinations. Similarly in Kelantan, businesses were monopolised by members of the royal families. During Governor Ord's first tour of duty between 1867-71, one matter which had attracted his attention was the effect on the Straits commerce of the Raja of Kelantan's personal monopoly on the trade of certain goods.¹³³

The main outline of the revenue system, prior to British administration, appeared to have been traditional and in keeping with the practice in other protected Malay states. In Perak,¹³⁴ for instance, the *Raja Bendahara* derived his revenue from duties on trade on the Kinta river, while the *Temenggong* who was in charge of defence works, prisons and chief executioner, and also in charge of markets, weights and measures, derived his revenue from a monopoly of the sale of salt and *attap* (used to make the roof of Malay houses), from fees on weights and measures, and from fines.¹³⁵

The next *Orang Besar Delapan* also derived their revenues from various sources. The *Maharaja Lela*, a chief above the law and entrusted with the protection of the Sultan at court ceremonies, derived his revenues from tolls on the river Dedap, while the *Laksamana*, who was in charge of the seacoast and of the tidal reaches of the Perak river, together with the *Shahbandar*,¹³⁶ collected customs duties for the Sultan at the

73-74, CO 273/88 on Administrative Report on Perak by J.W. Birch, 14 December 1874 and evidence of Che Mida, 14 October 1876 before the Commission of Enquiry into Perak outrages, both enclosed in Jervois to Carnarvon 430 of 14 December 1876.

¹³³J. de Vere Allen, "The Colonial Office and the Malay States, 1867-73", *JMBRAS*, Vol. 36, Part 1, 1963, pp. 12-13.

¹³⁴Sadka, Emily, "The Journal of Sir Hugh Low, Perak, 1877", *JMBRAS*, Vol. 27, Pt. 4, Nov., 1954, Appendix 2 (The Perak Constitution), pp. 107-108.

¹³⁵The first four great chiefs in the hierarchy, next in powers after the Sultan, were the Raja Bendahara, The Orang Kaya Besar, Temenggong, The Mentri. See Emily Sadka; *The Protected Malay States 1874-1895*, Appendix 1 (The Perak Constitution), pp. 382-385. See also R.O. Winstedt; "History of Perak", *JMBRAS*, Vol. xii, Part 1, pp. 119-176, Appendixes A-K, for an account of the Perak Constitution with summaries of functions, revenues and territorial affiliations.

¹³⁶The Shahbandar was the lower Perak chief who acted as harbour master and collected customs revenue on the Perak river.

mouth of the Perak river, and each of them was entitled to a share of collections. The *Sri Adika Raja*, who was a territorial chief of Upper Perak, derived his revenues from taxes on tin and gutta exported from his district, and from a rice levy¹³⁷ on each household. The *Panglima Kinta*¹³⁸ received 1/10th of all the tin produced in his district.

The *Shahbandar* was the joint collector with the *Laksamana* of customs revenue¹³⁹ on the Perak river, and took a commission on collections. *Imam Paduka Tuan*¹⁴⁰ derived his income from the contributions of the pious.¹⁴¹ The poll tax was not commonly levied and the rates were not standardised, though there were references to a poll tax of fifty cents on every male in Perak levied by the *Bendahara*. *Maharaja Lela* levied a poll tax of \$2 on every married man in his district, while the Sultan levied a poll tax of \$2.25 on every household in the Krian, which was a royal district. It should be noted that the sparseness of the population, the low level of productivity, and the importance of mining in the economy, during the period in question, explained the general absence of land rent and taxes on subsistence agriculture, and the importance of taxes on trade in the revenue system of the state.

¹³⁷There was no levy on production for subsistence except in Krian and Upper Perak where it was levied annually of seventy gantangs per household. This special treatment of the Krian district was explained by the fact that it was cleared and cultivated by migratory cultivators who were resident in Penang, Province Wellesley and Kedah. They just came to Krian long enough to take the crop. They were not subjected to *kerah* service, and the padi and household tax constituted their only revenue contribution. Emily Sadka; *The Protected Malay States 1874-1895*, Appendix 1 (The Perak Revenue System), pp. 385-386.

¹³⁸He was the territorial chief of Kinta and warden of Perak's eastern frontier.

¹³⁹Customs duties were imposed on all imported goods; the most important being opium, tobacco, textiles, rice, oil and salt. Export taxes were levied on tin, gutta and other wood gums, atap, rattans and hides. However, during J.W.W. Birch's residency, the Perak river export duties were partly farmed out to Chinese and partly collected by the *Shahbandar* and a lesser chief. Emily Sadka; *The Protected Malay States 1874-1895*, Appendix 1 (The Perak Revenue System), p. 386.

¹⁴⁰He was the chief religious dignitary in the state but his office was vacant in 1874.

¹⁴¹Emily Sadka; *The Protected Malay States 1874-1895*, Appendix 1 (The Perak Constitution), pp. 384-385.

For the tin states¹⁴² in the Malay peninsula, which spread from Linggi to Kedah, tin production was another major contributor of revenue. Until the 19th century, most of the tin industry which was internally financed by the ruling class was controlled by members of the royal and chiefly families. Revenues were generated from either direct ownership of the mines or by levying tribute on production and export.

In Pahang, Frank Swettenham,¹⁴³ discovered that the environment was mediaeval and chaotic. Similarly to other states, the revenue system was organised merely to put money into the coffers of the ruler, and his chiefs.¹⁴⁴ Even onions and curry-stuffs were taxed exorbitantly, and the Sultan granted monopolies for the sale of household articles and farmed out the collection of import duties on nearly every commodity.

In April 1885, on his official visit to Pahang to persuade the Sultan to enter into treaty with the British Government, Frank Swettenham, acting Resident of Perak, reported that,

“....The people were forced to pay taxes called *serah* and *banchi*. When the district Chief visited Pekan annually to pay homage to the Raja, a poll-tax of one dollar a head was demanded from the people to defray the expenses of his journey to the capital. Gold could be sold only to the Raja, and there was said to be no fixed standard of weight; most imports and exports were taxed.....The import duties on nearly every necessity and luxury seemed to have been farmed to Chinese at Pekan. The gambling farm at Penjom paid \$50 a month to the Orang Kaya of Lipis who also collected a tax of 1/10th on imported cloth”.¹⁴⁵

¹⁴²The tin states were Perak, Negeri Sembilan, Selangor and Kedah.

¹⁴³The problems that faced the first British Resident were the abolition of slavery, the regulation of forced labour, the fixing of allowances for the Sultan and chiefs in place of feudal dues, and the framing of laws for the tenure of land. See R.O. Winstedt; *Malaya and Its History*, pp. 72-73.

¹⁴⁴The scramble for the share of the revenue had wrecked the Malay political structure which had resulted in prolonged intra-Malay disputes. See Emily Sadka; *The Protected Malay States 1874-1895*, p. 32-37.

¹⁴⁵W. Linehan, “A History of Pahang”, *JMBRAS*, Vol. XIV, Part II, 1936, pp. 106-107. Swettenham gave a list of the prices of various commodities at Penjom:

Commodities Taxed	Rate of Tax (\$)
Kerosene	\$1 per tin

In the economic affairs of Kedah, Bangkok periodically asked for certain reports such as the number of opium dens in Kedah, and information on how the commutation tax was collected.¹⁴⁶ For instance, in 1857 and again in 1867 the British officials in the Straits complained to Bangkok that Kedah had infringed treaty agreements with the British by, among other things, levying too high a duty on cattle, grain and other exports to Penang and Province Wellesley. The duties imposed by Kedah were much heavier than those of other Malay states. Supplies of cattle, which came mainly from Patani, Songkhla (Singgora) and Ligor, were charged a transit duty of 30 cents per head of cattle leaving their territory whilst Setul and Perlis levied a similar duty of 50 cents. However, Kedah imposed three different levies on cattle before they were allowed to cross the Muda River into Province Wellesley:¹⁴⁷

- a) Hasil Raja (a levy for export) of \$1 per head of cattle.
- b) Hasil Chap (a levy for burning a mark on the horn to indicate that the Hasil Raja had been paid) of 25 cents per head.
- C) Hasil Tebing (a levy paid to the Customs Housekeeper for leaving the bank to cross the river) of 3 cents per head.

Tobacco	\$1 per kati
Salt	\$1 for 6 gantang
1 ball of opium	\$1
Best quality rice	\$1 for 12 gantangs

¹⁴⁶SC/13 Phraya Montri Suriwong to Sultan, 15th August, 1890, cited in Sharom Ahmat, "Kedah-Siam Relations, 1821-1905", *Siam Sociological Journal*, Bangkok, Vol. 59, 1971, p. 103.

¹⁴⁷CO 237/13 Ord to C.O., 31st December, 1867, cited in Sharom Ahmat, "Kedah-Siam Relations, 1821-1905", *Siam Sociological Journal*, Bangkok, Vol. 59, 1971, p. 103.

Decline of the Malay Sultanate Revenue System

The advent of British administration in the Straits Settlements brought about rapid economic development, which stimulated the search for new fields by Europeans and Chinese capitalists resulting in the influx of capital into the Malay states. As a result, the monopolistic practices of the Malay Sultans and their chiefs were forced to change into some bilateral business ventures.¹⁴⁸ This process was followed by a fundamental reform of the revenue system in the Malay states. Revenue collection was privatised. The mining right was farmed out to eligible prospectors and The Malay ruling class became passive partners but able to dictate the amount of profit from the ventures.¹⁴⁹

Until 1840, most tin mining in the Malay peninsula was controlled and undertaken by Malays with some small and scattered Chinese operators.¹⁵⁰ Thereafter, Chinese immigrants flocked in to mine in Perak, Selangor and Sungei Ujong. Others opened up gambier and pepper plantations in Johore. Initially, the influx was sustainable where wages and advances to the labourers were paid by Malay chiefs who borrowed the money from Chinese merchants in the Straits Settlements. The chiefs were entitled to buy the tin at a settled price and sell at an exorbitantly high price.¹⁵¹ Eventually, in the 1850s, the monopoly of mining and commercial agriculture passed

¹⁴⁸Emily Sadka; *The Protected Malay States 1874-1895*, pp. 18-23.

¹⁴⁹Statement by the Mentri at Penang, 26 August 1873, C. 111, enclosure 6 in no. 52, Clarke to Kimberley, 24 February 1874. F.A. Swettenham in his Report of the Larut Commissioners, 21 February 1874 reported that in an evidence dated February 1874, the revenue collected was meant for their private consumption. See Emily Sadka; *The Protected Malay States 1874-1895*, pp. 26-27.

¹⁵⁰In 1824, there were about 200 Chinese miners with their own Kapitan China in Lukut, and nearly 1,000 in Sungei Ujong four years later. See Wong Lin Ken; *The Malaysian Tin Industry, with Special Reference to the States of Perak, Selangor, Negri Sembilan and Pahang* (Ph.D. Thesis, University of London, 1959) pp. 43-44, cited in C.M. Turnbull, "The Origins of British Control in the Malay States Before Colonial Rule" in *Malayan and Indonesian Studies*, ed. John Bastin and R. Roolvink (Oxford University Press, London, 1964) pp. 167-168.

¹⁵¹T.J. Newbold, "An Account of Sungei Ujong", *JASB*, vol. iv (1835), pp. 548-549, whereby the Malacca merchants provided capital to the Malay chiefs who advanced it to the miners in return for payment of tin and rights to collect tolls on tin and opium, cited in C.M. Turnbull, "The Origins of British Control in the Malay States Before Colonial Rule" in *Malayan and Indonesian Studies*, ed. John Bastin and R. Roolvink (Oxford University Press, London, 1964) p. 168.

into the hands of well-capitalised Chinese financiers in the Straits Settlements, and the Malay control diminished.¹⁵²

On 12 February 1875, after the signing of the Pangkor Engagement in 1874, the Colonial Secretary of the Straits Settlements issued a circular, directed to Swettenham as Assistant Resident of Selangor, but applied to all Residents in the Malay states. This circular, one of the earliest issued, recommended the replacement of the Malay Sultanate tax system by one based on liberal principles.¹⁵³

¹⁵²R.O. Winstedt in "A History of Selangor", *JMBRAS*, vol. xii, 3 (1934), pp. 16-17, commented "It was the Chinese immigration on a large scale that finally broke down the Malay administration", cited in C.M. Turnbull, "The Origins of British Control in the Malay States Before Colonial Rule" in *Malayan and Indonesian Studies*, ed. John Bastin and R. Roolvink (Oxford University Press, London, 1964) p. 168.

¹⁵³The intention of the circular was self explanatory: "where possible, the duties on imports should be diminished, so as to induce traders to visit the country, and there should be one uniform system through all the Native States, which should be on as simple a scale as possible, putting restrictions on as few articles as possible, and keeping a free communication of every kind by land and water, as far as may be done without affecting the necessary police supervision". See Sel. Sec. 8/75, letter Col.Sec. to Assistant Resident, Selangor, 12 February 1875, cited in Emily Sadka; *The Protected Malay States 1874-1895*, p. 331.

Part II--The Advent of British Administration in the Malay Peninsula and Singapore

The Advent of British Administration:

a. The Straits Settlement and the Protected Malay States

The constitutional development of the Malay States with their well-defined administration and codified Islamic law¹⁵⁴ goes back to the history of Malacca as the first Muslim Kingdom.¹⁵⁵ Malacca's strategic economic location aided its rapid rise from a small typical Malay fishing village to the busiest port of call; providing vital trade linkage between the West and the East through the Strait of Malacca. However, Malacca's enjoyment of economic prosperity from its inception in 1400 was ended when the Portuguese defeated her 1511.¹⁵⁶ Portuguese rule which lasted for about 130 years gave way to the far better equipped Dutch in 1641.

The primary impulse to establish a British port in the peninsula was strategic and

¹⁵⁴Ahmad Mohamed Ibrahim; *Sistem Undang-Undang di Malaysia*, p.

¹⁵⁵Moshe Yegar in *Islam and Islamic Institutions in British Malaya* (The Magnes Press, Jerusalem, 1979) regarded Malacca as a "militant centre" for the spread and diffusion of Islam to other States in that region. Islamic law influenced and governed every aspect of the Malaccan administration. See S.M.N. Al-Attas; *Islam Dalam Sejarah dan Kebudayaan Melayu* (Penerbit Universiti Kebangsaan Malaysia, Kuala Lumpur, 1972) who explored in depth its influence over religious, cultural and intellectual traditions of the Malays.

¹⁵⁶D. K Bassett in an article on European Influence in the Malay Peninsula 1511-1786 (JMBRAS, vol. XXXIII Pt. 3, 1960) p. 10-11 explained that their primary objective in the Indian Ocean was to impair Mohammedan power in the Mediterranean by diverting the commerce that sustained it from the Red Sea and Persian Gulf and then monopolizing it around the Cape of Good Hope. This objective was continued in their venture to Malacca and was declared to be "a crusade against the Mohammedan religion." [W. Makepeace, et. al., (gen.ed..) in *One Hundred Years of Singapore*, vol. I (London, 1921) p. 18]; "seeking to win souls for the Catholic faith" [R. Allen, *Malaysia, Prospect and Retrospect* (London, 1968) p. 20; "hate against the Muslims" [B. W. Andaya and L. Y. Andaya; *A History of Malaysia* (London, 1986) p. 56; their rule was imbued "with commercial and religious aggression" [Yegar, op.cit., p. 8]. The Portuguese campaign against Islam was welcomed by a massive exodus of Mohammedan merchants from Malacca to Aceh, Bantam and Brunei and similar movement of Chinese traders to Patani. The aftermath of these events was to impoverish significantly the royal exchequer. An attempt to block the exodus was forestalled by the rising power of Islam in Java in 1526. See D. K Bassett in an article on European Influence in the Malay Peninsula 1511-1786 (JMBRAS, vol. XXXIII Pt. 3, 1960) pp. 10-11.

protective but the fact that Penang¹⁵⁷ was eventually chosen on 11 August, 1786, was also due to the economic motives of Captain Francis Light, an official of the company.¹⁵⁸ In 1795 during the War of the French Revolution, the British took Malacca from the Dutch,¹⁵⁹ and in 1819 Thomas Stamford Raffles¹⁶⁰ signed a treaty with Sultan Husain¹⁶¹ and the Temenggong of Johore for a right of the East India Company to establish a

¹⁵⁷ According to Ahmad Ibrahim, *Piagam Keadilan yang Pertama 1807* states that Penang was uninhabited. This declaration was contrary to his findings that proved that Penang had thousands of settlers long before Light's arrival in Penang in 1786. According to him, there is a note dated 1795 that was found in a *daftar ukur*. According to this note, there was a Malay village, approximately 18 acres in size, located at the southern bay of Penang. This note proved that the Malays had been in Penang since 1705. See Ahmad Mohamed Ibrahim; *Sistem Undang-Undang di Malaysia*, (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1986) p. 16. See also E. Trapand; *A Short Account of Prince of Wales Island*, 1788, Reprinted, 1962, as cited by Ahmad Mohamed Ibrahim; *op. cit.*, p. 16. The notion that Penang was virtually uninhabited was mentioned in many historical writings such as R. Winstedt in *Malaya and Its History*, p. 53 which comfortably confirmed that Penang was almost uninhabited; L.A. Mills in an article *British Malaya* (JMBRAS, vol. XXXIII Pt. 3, 1960) p. 37 states that "When Light's squadron arrived Penang was a jungle inhabited save by few Malays....".

¹⁵⁸ Apart from economics motives, Light hinted that the East India Company and his employer [Jourdan, Sullivan and De Souza] that failure to help Kedah would prompt the Sultan to turn to the Dutch power for protection against external enemies. Foiled in this attempt, he turned to Warren Hastings, who had recently assumed the government of Bengal, depicting the Sultan of Kedah as old man "sensible of his age and infirmities" surrounded by untrustworthy ministers and scheming relatives. See Light to Warren Hastings, 17 January 1772, Add. MSS. 29, 133, ff. 8-12, as cited by D.K Bassett; "British Commercial and Strategic Interest in the Malay Peninsula During the Late Eighteenth Century" in *Malayan and Indonesian Studies*, ed. John Bastin and R. Roolvink (Oxford University Press, London, 1964) pp. 125-126.

¹⁵⁹ The cession of Malacca was made official under Article X of the Treaty of Holland, 1824. See *Treaties and Engagements Affecting the Malay States and Borneo*, edited by Sir William George Maxwell and William Sumner Gibson (London, 1924), pp. 8-14.

¹⁶⁰ In October of 1813, he visited Lord Hastings at Calcutta and obtained a permission to locate for a spot for a British station in Riau or in Johore. The rationale for this expedition was crystal clear in his instruction "There is some reason to think that the Dutch will claim authority over the State of Johore by virtue of some old engagements....." See R. Winstedt; *Malaya and Its History*, p. 58.

¹⁶¹ Raffles's dubious legal ploy was imminent and crystal clear in this cessional act. The reigning Sultan 'Abdul al-Rahman was enthroned by the Bugis influence while his elder brother Husain, Bendahara and Temenggong were away to attend a wedding celebration in Pahang. However, he was under the Dutch surveillance and would definitely be forbidden under the agreement signed with the Dutch on 26 November, 1818, to ratify any cession to the British. This treaty states that all ports under Johore's jurisdiction were only to the Dutch and local vessels. Even though Raffles consider this treaty was invalid in lieu of the Dutch unconditional withdrawal from Asian waters, he gave recognition to 'Abdul al-Rahman's enthronement in 1813. But seeing that the current sultan could not secure his cessional of Singapore, he deliberately withdrew his honoured pledge and install Husain as Sultan of Johore instead. See Winstedt, R.; *Malaya and Its History*, pp. 58-59.

“factory”¹⁶² on the island. By 1824,¹⁶³ the Company had succeeded in extracting concessionary rights over the whole of Singapore.

By 1824¹⁶⁴, the East India Company had completed the initial cession of Penang, Malacca and Singapore, collectively known as the Straits Settlements.¹⁶⁵ Initially, the Settlements were administered as the fourth presidency of the Government of Bengal in India but the abolition of the Company in 1858¹⁶⁶ caused the administration to be transferred to the Imperial India Office.¹⁶⁷ The Straits Settlements were established as

¹⁶²T. J. Newbold; *Political and Statistical Account of the British Settlement in the Straits of Malacca*, vol. I (London, 1839), vol. I, Appendix No. VIII, pp. 485-487. Article I of the agreement between Raffles and Sultan Hussain Mahomed Shah specifically defining the E.I.C.’s boundaries as “as far as the range of cannon shot, all round from the factory.” This dubious legal ploy was actually to disguise Raffles’s future plan for the Company’s expansion in the island. The tactic had been employed in India where the “original factory” was finally expanded into a “Presidency town.” See Baden-Powell, p. 31 on the creation and evolution of “factories” into “settlements” and “Presidency” in India.

¹⁶³R. Winstedt; *Malaya and Its History*, p. 61.

¹⁶⁴Mohd Noor in *Land Rent Revenue Administration in Peninsular Malaysia: A Survey of Some Socio-Legal and Administrative Issues From A Local Muslim Perspective* [Unpublished thesis, University of Edinburgh, 1996] quoted the year as 1824 but C.M. Turnbull, *op. cit.*, quoted it as 1826.

¹⁶⁵In 1830, the Presidency of Penang ceased to exist and in 1832 the headquarters of Government were transferred to Singapore, and the three Settlements being under the jurisdiction of the Government of Bengal. See H.P. Clodd; *Malaya’s First British Pioneer-The Life of Francis Light*, p. 151.

¹⁶⁶By this time, the Straits Government was already the paramount authority in the Malay Peninsula. Colonel Orfeur Cavenagh, last Indian Governor of the Straits Settlements who assumed office in 1859, shared the merchants’ confidence in the fruits to be gained from opening up the hinterland. He even described the inability of the most Malay rulers “for the most part illiterate debauchees” to establish settled government as providing the British avenue to be the dominant power in this quarter. See Cavenagh to India, 10 September 1860, SSR, R₃₇, 261-265; Cavenagh to India, 6 October 1860, SSR, R₃₈, 17-18; Cavenagh to India, 13 October 1860, SSR, R₃₈, 40-41, as cited by C.M. Turnbull, “The Origins of British Control in the Malay States Before Colonial Rule” in *Malayan and Indonesian Studies*, ed. John Bastin and R. Roolvink (Oxford University Press, London, 1964) p. 167.

¹⁶⁷Throughout this period, 1823 to 1867, when the administration of Singapore was controlled from India, the local government had little initiative and the civil service, which had little experience in non-Indian problems, lacked expertise for providing an able administration for the people, the majority of whom were the Chinese. The transfer of control from the India Office to the Colonial Office took place due to the agitation which began in the Settlements about the year 1835 and the willingness of the post mutiny government in India to get rid of these long-distance responsibilities. What actually initiated the main agitation was the Currency Act of 1855. In 1855, it was suggested that the standard currency should become the Indian Rupee rather than the Straits dollar; despite the fact that for years it had been the generally accepted currency in South-East Asia. Furthermore the Indian Government in 1855-1856, in an attempt to balance the budget of the Settlements, suggested that there should be taxes on trade. With

a Crown Colony and transferred to the Colonial Office by Order in Council dated 1st April 1867.¹⁶⁸ However, the Crown Colony still had to pay for its defence, and after years of dispute as to the amount, the military contribution was fixed in 1895 at 17.5 % of its total revenue.¹⁶⁹

Up to 1874, the Straits Settlements had undergone tremendous changes in status and administration and inevitably served as a gateway to the Malay States which later led to a fundamental change in the long standing British "non-intervention policy" towards direct intervention¹⁷⁰ in the affairs of the Malay States. The Pangkor

other factors such as the criticism from the Straits merchants, together with the controversy over free-port status and currency, led to the presentation of a petition to the British Parliament in 1858 asking for transfer from the Indian Office. As a response, Britain set up a Commission in 1863 headed by Robinson, the Governor of Hong Kong to investigate the revenue position of the Settlements. After the Commission reported that the revenue position was such that the transfer would not be a drain on the British Treasury, there were no further objections. The British Government expected that the Settlements should be financially self-sufficient. See R.O. Winstedt; *Malaya - The Straits Settlements and the Federated and Unfederated Malay States*, p. 168; N.J. Ryan; *The Making of Modern Malaysia and Singapore*, pp. 114-116. Cf., N. Ginsburg; *Malaya*, pp. 425-427. For detailed historical events on the transfer, see L.A. Mills; *British Malaya 1824-67* (JMBRAS, vol XXXIII Pt. 3, 1960) pp. 311-325.

¹⁶⁸The Government of the Straits Settlements, just like a normal Crown Colony, was in the hands of a Governor and Commander-in Chief, who was assisted by an Executive Council whose members were the Colonial Secretary, the Resident Councillor, the Attorney General, the Treasurer and the Colonial Engineer. The Legislative Council consisted of the members of the Executive Council and of such official and unofficial members as the Governor in pursuance of instructions of His Majesty the King might issue from time to time. The Legislative Council had the power to establish laws and constitute courts of justice and provide for the raising and expenditure of the public revenue. See R.O. Winstedt; *Malaya - The Straits Settlements and the Federated and Unfederated Malay States*, pp. 168-169; R.L. German; *Handbook to British Malaya* (1927), p. 53; N.J. Ryan; *The Making of Modern Malaysia and Singapore*, pp. 116-117; Lennox A. Mills; *British Rule in Eastern Asia*, pp. 28-44. It should be noted that the principle of free trade and light taxation provided an unlimited tax haven in which the European merchants were able to prosper, but despite their economic power, they were precluded by the nature of the East India Company's administration from any active role in politics. In 1867, they succeeded in persuading the British government to transfer the Straits Settlements to the direct rule of the Crown. See C.M. Turnbull; *The Straits Settlements 1826-67 -- Indian Presidency to Crown Colony*, p. 5.

¹⁶⁹R.O. Winstedt; *Malaya - The Straits Settlements and the Federated and Unfederated Malay States*, p. 168.

¹⁷⁰Bowing to the pressure from the merchants who wanted to protect their investments especially in the tin mines industry and fearing intervention by other powers, Britain started to consider a change of policy in the Malay States. The policy behind Governor Sir Andrew Clarke's instruction to investigate and report, reflected this changes:

"Her Majesty's Government have no desire to intervene in the internal affairs of the Malay states but looking to the long and intimate connection between them and Her Majesty's

Engagement of 20 January, 1874¹⁷¹ marked the beginning of direct British intervention in the Malay States. The appointment of James Wheeler Woodford Birch¹⁷² as the first British Resident in Perak and an Assistant Resident Captain T.C.S. Speedy for Larut¹⁷³ in the same year the Pangkor Engagement was signed, formally marked the introduction of the "Residential System".

By the end of the 1880's British influence was dominant in all those the states which lay outside Siamese claims of suzerainty. Prior to 1895, the administration of the several British protected states was developing in different directions. In that year, a Treaty of Federation¹⁷⁴ was agreed and Perak, Selangor, Pahang and Negri Sembilan

Government, Her Majesty's Government feel it incumbent to employ such influence as they possess with the native princes to rescue these fertile and productive countries from the ruin which must befall them if the present disorders continue unchecked."

"I have to request that you will carefully ascertain, as far as you are able, the actual condition of affairs in each State and that you will report to me whether there are, in your opinion, any steps which can properly be taken by the Colonial Government to promote the restoration of peace and order and to secure protection to trade and commerce with the native territories. I should wish you, especially, to consider whether it would be advisable to appoint a British officer to reside in any of the States. Such an appointment could, of course, only be made with full consent of the native Government."

According to a minute by the Colonial Secretary:

"We would not see with indifference interference of foreign powers in the affairs of the Peninsula, on the other hand it is difficult to see how we should be justified in objecting to the native states seeking aid elsewhere if we refuse to take any steps to remedy the evils complained of."

See N.J. Ryan; *The Making of Modern Malaysia and Singapore*, pp. 136-139.

¹⁷¹The Colonial Office List, 1955, p. 130.

¹⁷²R.O. Winstedt; *Malaya - The Straits Settlements and the Federated and Unfederated Malay States*, pp. 148-149.

¹⁷³Frank A. Swettenham; *British Malaya -- An Account of the Origin and Progress of British Influence in Malaya*, pp. 176-177.

¹⁷⁴ANM/KL P/P3, PFC, 1909-1910. This idea of federation, initiated by Frank Swettenham, was probably the first concept of "centrally-governed administration" being tried in the four states. The Treaty of Federation of July 1895 was signed between the High Commissioner of the FMS acting on behalf of the government of His Majesty the King, Emperor of India, and the rulers of the FMS of Perak, Selangor, Pahang and Negri Sembilan. Under this agreement, a federation known as the Protected Malay States was officially born and administered under the advice of the British Government. In 1897, the first Rulers' Conference was held in Kuala Lumpur. This event marked the significance of closer association between the States. The outcomes of the Conference were the appointment of a Resident-General, co-

which had British Residents, were declared as the Federated Malay States (FMS) in 1895.

Under the Anglo-Thai Treaty of 1909, the British obtained rights of suzerainty over Kelantan, Trengganu, Kedah, and Perlis. These states, thereby, became British protectorates with Advisers rather than Residents, while Johore had a special relationship with the Straits Settlements authorities.¹⁷⁵ Collectively, the latter five Malay States were known as the Unfederated Malay States (UFMS). The nine Malay States (FMS and UFMS) were protectorates, not British territories. The control of their government was based upon treaties with the Sultans which bound them to govern in accordance with the advice of the British Residents or Advisers. Even though the administrations followed the Crown Colony model, the states were politically and juridically independent.¹⁷⁶

ordination of common policy formulation, and sharing of resources for development.

¹⁷⁵Phillip Loh Fook Seng; *The Malay States 1877 - 1895: Political Change and Social Policy* (Kuala Lumpur, 1969) pp. 1-80; CO 273/138: Stanley to Weld, Private of 23 December 1885 enclosed Proposed Agreement 10/11/1885, as also cited by Loh. Roland Braddell in *The Legal Status of the Malay States* (Malayan Publishing House Ltd., Singapore, 1931) p. 24 described Johore at that time as "a highly organized state."

¹⁷⁶Lennox A. Mills; *British Rule in Eastern Asia -- A Study of Contemporary Government and Economic Development in British Malaya and Hong Kong* (Oxford University Press, London, 1942) p. 5.

b. The Federation of Malaya and Malaysia

When the second World War broke out in Malaya in 1941, with the invasion by the Japanese Imperial Army, the constitutional problems of the Malay peninsula had by no means been solved. Unity and assimilation amongst ethnic groups appeared only a remote possibility, and the country was still divided into four FMS, five UFMS, and the three SS. After the war ended, with the unconditional surrender of the Japanese Imperial Army, Malaya's economy and civil administration were in a fragmented and chaotic state.¹⁷⁷ Britain regained control and administered the country through the British Military Administration (BMA) from September, 1945 to March, 1946. A proposal for a Malayan Union¹⁷⁸ was inaugurated on 1 April, 1946, despite strong opposition from Malay leaders, various local organizations, and some former senior colonial officers.¹⁷⁹ Bowing to the opposition, the Malayan Union was abandoned and a working committee was set up including representatives of both the Sultans and United Malays National Organization (hereinafter referred to as "UMNO"), which finally agreed to the constitution embodied in the Federation of Malaya Agreement of 1 February, 1948.¹⁸⁰ However, Singapore remained a Crown Colony.¹⁸¹ On 31 August, 1957, the Federation

¹⁷⁷Gullick, p. 83; R. Allen, *Malaysia: Prospect and Retrospect* (London, 1968) p. 82.

¹⁷⁸The Japanese during the war attempted to gain support for their occupation of Malaya by exercising a policy of divide and rule. Their policy over the Chinese in China stood little chance of getting support from the Chinese in Malaya. So in order to please the Malays, they suppressed and persecuted the Chinese. However, this policy backfired: they did not gain support from the Malays because of their policy returning Kedah, Perlis, Kelantan and Trengganu to Siamese's rule in October 1943. This ploy resulted in Sino-Malay antagonism which erupted into revenge and fighting, and prompted the proposal for the Malayan Union. This proposal, drafted by the Colonial Office Planning Unit and put forward by the newly elected Labour Government in Britain, was decided without consultation with any significant warring factions. See C.B. Simandjuntak; *Federalisme Tanah Melayu: 1945-1963* (Petaling Jaya, 1985) p. 43.

¹⁷⁹Amongst those who expressed their protest were Sir Frank Swettenham, Sir Ronald Braddell (one of the advisers to UMNO), Lawrence Guillemard, Cecil Clementi, Graham Maxwell and Richard Winstedt (Andaya, *op. cit.*, p. 256); Grammans, and Rees-Williams (Simandjuntak, *op. cit.*, p. 48). Cf., N. J. Ryan; *The Making of Modern Malaysia and Singapore*, p. 231.

¹⁸⁰The Colonial Office List, 1955, p. 130.

¹⁸¹The separation of Singapore from the Malay Peninsula was made for two main reasons--i) its importance as a military base and the political problems this might bring about, ii) her overwhelming Chinese population would upset the racial balance in the Malay Peninsula. See Ryan, N.J.; *The Making of Modern Malaysia and Singapore*, pp. 251-252.

gained full independence.¹⁸²

A few years later, merger with Malaya of the last British territories (Sarawak, North Borneo, and the protectorate of Brunei) and Singapore was mooted. After a positive report from the Cobbold Commission, the Malayan and British Government agreed in July 1962 that the new state of Malaysia, minus Brunei, would come into being on 31 August 1963.¹⁸³ Due to political differences, Singapore seceded in August, 1965.

¹⁸²General Templer, appointed as the High Commissioner in 1952, was given the directive by the British Government as follows: "The policy of His Majesty's Government in the United Kingdom is that Malaya should in due course become a fully self-governing nation. His Majesty's Government confidently hopes that the nation will be within the Commonwealth.....Communist terrorism is retarding the political advancement and economic development of the country and the welfare of its peoples. Your primary task in Malaya must, therefore, be the restoration of law and order, so that this barrier to progress may be removed." See N. J. Ryan; *The Making of Modern Malaysia and Singapore*, pp. 244-245.

¹⁸³The state offices were ranked in multiples of four with elaborate titles and administrative responsibilities, a typical pattern which recurred in other Malay states. See Emily Sadka; *The Protected Malay States 1874-1895*, p. 11; N. J. Ryan; *The Making of Modern Malaysia and Singapore*, p. 263.

Part III--Development of Taxation System

Definition of Direct and Indirect Taxes¹⁸⁴

There is no generally accepted distinction between direct and indirect taxes. John Stuart gave the following definition:

“A direct tax is one which is demanded from the persons who is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another.”

Thus, direct taxes are generally taxes on persons, while indirect taxes, as one of the oldest sources of government revenue, are generally taxes that are attached to goods, transactions or events. Following the definitions, income tax, corporation tax, gift tax, death duties, net worth tax, property tax are deemed direct taxes whilst indirect taxes include VAT, sales tax, excise duties, stamp duties, etc.

Tax Policy: (1900-1930)

Expansion of Scope of Taxation

Until 1937, the revenue of the SS had been comparatively very much less than that of the FMS.¹⁸⁵ It was mainly due to its free trade policy, which had debarred it from a very lucrative field of taxation, making its revenue singularly inelastic.¹⁸⁶ The indirect form of taxation, import and export duties, which had existed since the advent of Stamford Raffles, was still the main contributor to both governments' revenue mechanism. The largest single item in the revenue of the SS had been the government opium monopoly

¹⁸⁴*International Tax Glossary*, ed. Susan M. Lyons, first publ. 1988, (IBFD Publications BV, Amsterdam, 2nd ed., 1992) pp. 74-75, 135.

¹⁸⁵Appendix 2.1

¹⁸⁶Governor Sir Hugh Clifford pointed out in 1927 that the FMS as “our very wealthy neighbour...sets a standard of efficiency and achievement of a kind that can only be secured by lavish expenditure... The vast majority of the kind of public works most required are not only not directly remunerative, but help to swell on account of upkeep, etc., etc. the recurrent expenditure of the Colony”. *Proceedings of the Legislative Council of the SS*, 1927, pp. C250-C251, cited in Lennox A. Mills; *British Rule in Eastern Asia*, p. 80.



which had contributed nearly 50% of the total revenue generated in the first two decades of the century whilst the principal sources of revenue of the FMS had been the export duties on tin and rubber, land rents and land sales¹⁸⁷ including opium and liquor monopolies. However, the weakness of its tax policy was that it was susceptible to world demand for Malaya's staple products, making its revenue singularly inelastic.

Apart from consolidating and standardising existing tax policies, the period from 1900 to 1913 saw a radical shift in tax policies, promulgated by both governments under the British colonial system with an emphasis on extending the scope of taxation in the SS and the FMS through implementation of various tax mechanisms by adopting models available in the United Kingdom and enforced in other part of the British colonies, protectorates and dominions. For instance, in 1902, a proposal bill, which was adapted from Part II of the Customs and Inland Revenue Act 1885 of the United Kingdom, was put forward to impose tax on the capital value of property in the SS but due to strong opposition in the SS, it was eventually withdrawn. It was thought that there were properties of this kind that escaped taxation, which ought not to escape taxation. This had been implemented in England, but the revenue generated was small due the fact there were many exemptions in the English Act. Even though this bill was anticipated to generate small revenue to the government, the government pointed out that it was an additional source of revenue which would not interfere with commerce or money invested for public purposes. No further reference was made to tax property on capital value of property until 1st November, 1905, when in a Legislative Council, the Attorney General proposed a similar bill entitled *An Ordinance to impose a duty on the property of bodies, corporate and unincorporated*.¹⁸⁸

By the middle of 1906, the SS government proposed a major amendment to the

¹⁸⁷Lennox A. Mills; *op. cit.*, pp. 81, 92.

¹⁸⁸*ANM/KL SS 17* : LCP, 1st November, 1905, pp. B201-B202; 17th November, 1905, pp. B211-B214. As a matter of fact, this bill was the bill of 1894 which actually drafted on the lines suggested by the Bar Committee.

Liquor Ordinance. The rationale of this move was mainly one of the rearrangement and consolidation of the existing law, although it did introduce some new matters into the existing law. It appeared that it was a desire on the part of the government to streamline the legal effects of both laws, The Opium and Liquors Bill. Since the government would not be likely to derive much from the tax on these beverages, its imposition was actually a restriction on trade to reduce public consumption.¹⁸⁹

In an attempt to supplement the revenue, following the failure to introduce direct taxation in 1860 to the SS, in 1863, the Indian Stamp Act was extended to the SS which was reluctantly accepted by the merchants.¹⁹⁰ The Stamps Ordinance II of 1881 and Ordinance X of 1885 were in force until 1907. In September, 1907, a new bill *An Ordinance to consolidate and amend the law relating to Stamps* was tabled. The rationale for this amendment was that the Ordinance of 1885 was passed on the basis when the dollar was worth $\frac{1}{2}$ of its current value which was definitely out of date by 1907. In addition, the amount which was then considered to be a reasonable consideration to be levied on transactions had decreased to about $\frac{2}{3}$ in value of what it was in 1885. With no other reason than to increase revenue for the government, Chapter IX of the proposed bill referred to death duties.¹⁹¹ Still with the intention to impose

¹⁸⁹ *ANM/KL SS 17* : LCP, 6th July, 1906, "An Ordinance to consolidate and amend the law for collecting a Revenue of Excise upon intoxicating Liquors"; 20th July, 1906. For instance, Wincarnis and Coca Wine, which contain on 2% of pure alcohol and used more as medicines than as beverages, and other wines of the same categories would now become dutiable under Section 4 of this bill, which would bring within the scope of the duties under the bill liquors containing 2% of alcohol, instead of 20% as was the case. Section 4 also raised the existing duties on liquors. However, it was thought it would not in any way reduce the consumption of liquors. Another important section was Section 22, empowering the farmer to collect the duty on liquors which were brought by passengers landing.

¹⁹⁰ Actually, in 1851, Calcutta had tried to extend the Act but intense opposition from European merchants in Singapore put on hold on the intention. See ST, 23 September 1851; SSR, S₂₀, Item 4, cited in C.M. Turnbull; *op. cit.*, pp. 203-204.

¹⁹¹ *ANM/KL SS 17* : LCP, 20th September, 1907, p. B139. Other Colonies had amended their Ordinances; the English Act was updated in 1891, in India it was updated in 1899 and in Hong Kong it was updated in 1901. This amendment would repeal the Stamps Ordinance of 1885 and form a consolidated law. Under the provision of Ordinance of 1885, the duty was imposed on flat rate 3% on the value of the estate. The government believed it was unfair for an estate valued at \$10,000 to pay the same amount tax as estate valued at \$1,000,000. Under this premise, it was proposed that duty should be on a staggered rate from 3% to 8% for estate valued at \$1,000,000 and over.

more taxes and to explore uncharted areas of taxation, the bill also proposed to tax policies of insurance, mine charters and fire policies, even though the government admitted that it would cause some opposition in its proposal to a certain extent. The Stamp Ordinance of 1907, similar to those already imposed in India, England and Hong Kong, would generate estimated additional revenue to the Colony by \$102,000.¹⁹²

By the end of 1907, the Colony seemed to be living beyond her means with glaring deficits of no less than \$500,000. A revenue of \$9,500,000, of which $\frac{2}{3}$ came from Licences and \$4,500,000 which account for $\frac{1}{2}$ of the total revenue generated, came from opium. Due to the precarious nature of the revenue, it was suggested that the government examine the heavy items of expenditure and explore the possibility of a retrenchment programme.¹⁹³ After a series of debates in the Legislative Council, it was suggested that the stamp duty be increased to balance the budget and satisfy the requirement of the Military Defence Contribution. In addition, to attract more ships to call at the Penang and Singapore ports, it was suggested that certain types of ship be given certain exemptions. With hesitations, the government reduced the light dues, which were finally abolished under the provisions of the Light Tolls Act in October 1910, to an extent that lesser the revenue by \$90,000; the benefits only being enjoyed by the shipping community.¹⁹⁴ In order to recoup that loss to make up for this gratuitous reduction, the government proposed to introduce the amended Stamp Bill and impose additional and excessive stamp duties which would affect the whole community. The government contended that this bill, actually a system of charging duty on leases and in

¹⁹² *ANM/KL SS 17* : LCP, 20th September, 1907; 11th October, 1907, pp. B159-B161, "Governor of the Straits Settlement's address to the Legislative Council in Supply Bill of 1908".

¹⁹³ *ANM/KL SS 17* : LCP, 1st November, 1907, p. B172, "Supply Bill of 1908". By this time, the Imperial government and certain factions of the British Public were striving their utmost to ruin the source of revenue from opium of the Colony ; to stifle the consumption of opium.

¹⁹⁴ *ANM/KL SS 17* : LCP, 23rd September, 1910, pp. B114, C235-C246, "Address of the Governor Sir John Anderson at a meeting of the Legislative Council"; 7th October, 1910, pp. B123-B124, "Supply Bill".

effect, would give a considerable decrease on duty imposed.¹⁹⁵ A majority of the unofficial council members, after studying the proposed bill thoroughly, found that the proposals to levy stamp duties on policies of insurance were enormous as compared with the amount of a premium payable in respect to those policies. The government's artifice in devising its tax policy was best described by T.S. Baker, in a vocal mode, who says,¹⁹⁶

"It seems to me, Sir, that the government are, with one hand, surrendering a shadow, and with the other hand grasping a real substance, or to put it more clearly, they are abolishing in part an unprolific tax and imposing additions to an ever growing, prolific one. This may be clever, this may be subtle, but, Sir, looking to the future welfare of this Colony, I am bound to say that I entertain grave doubts as to the wisdom of it".

The critics argued that considering the depression in business that had prevailed during that time in question, and the heavy depreciation that had occurred in most of articles of trade, any increase of taxation would either directly or indirectly affect the trade and commerce of the free ports. They believed that the principle of the proposed bill constituted a departure from the current Stamp Bill which as a result would introduce innovations that, in great majority of cases, would amount to direct taxation upon the trade and overturn the Colony economy. They emphasised that during that period, trade and turnover had never been in greater need of receiving encouragement by way of facilities and exemptions such as would be likely to attract capital, and include natural expansion of trade. As a natural process, higher and unreasonable duties imposed on the community would deter capital investment elsewhere to cheaper markets. As usual,

¹⁹⁵ *ANM/KL SS 17* : LCP, 4th November, 1907, pp. B193-B197; 2nd December, 1907, pp. B233-B234; 11th October, 1907, p. C144, "Address of His Excellency Governor Sir John Anderson at a Meeting of the Legislative Council". Under the proposal, if the lease did not exceed one year, the duty would be as previous rate. If the period exceeded one year but was less than five years, the duty would be increased as in the second scale. Above five years or for an indefinite period, the duty would be doubled.

¹⁹⁶ *ANM/KL SS 17* : LCP, 2nd December, 1907, pp. B234-B235, B238. There was a case where stamp duty imposed was 160% as much as the actual premium itself. In addition, the proposed schedule of stamp duties exceeded the prevailing rates in the United Kingdom. In response to the accusation put forward by T.S. Baker that the government was not fair in putting higher duties on the Colony than in the United Kingdom, the Colonial Secretary replied vocally that the Colony paid no tobacco duties, whereas in England, a very large sum was derived from tobacco duties.

the government remained adamant.¹⁹⁷

The government in fortifying its tax policy recapitulated that under the current economic depression, it was logical and desirable to alter that taxation from a special class by reducing the light dues, and subject the tax burden to the general community. The government contended that the proposed bill drafted by the Treasurer on 1st August, 1907, did not justify severe strictures about “discreditable production” and the “reckless haste”; overall the bill had neither reduced nor increased taxation. The government acquiesced that this tax policy was in dire need of amendment because statistics had shown that numerous ships had “passed our doors” to the calling ports. The Governor, in an attempt to secure majority votes for the proposed bill, further explained the government’s direction and rationale in future tax policies:¹⁹⁸

“If we are only to have the same taxation in these matters--direct taxation--as is imposed in the United Kingdom, well then we may say that if we follow the example of the United Kingdom in direct taxation, we must follow the example of the United Kingdom in regard to indirect taxation. At present time the direct taxation in this Colony is extremely light. As has been pointed out over and over again, the great burden of taxation here falls upon the Chinese, and the justification for that is, I presume, that the Chinese here, those who mainly pay that tax, are not permanent residents. They come here to stay for a little time and take advantage of the high wages and so on, and then go back. At present the bulk of the taxation in the Colony is paid by that particular class of the Oriental population. Those who do not consume opium pay less, I should say, than in any other part of the world. I am certain, at any rate, that everyone will admit that they pay very much less here than in England.”

After a series of adjournments and small amendments, the bill was read the third time and passed under protest as *Ordinance XXXVI of 1907* with effect from 1st February, 1908.¹⁹⁹

¹⁹⁷ANM/KL SS 17 : LCP, 2nd December, 1907, pp. B234, B236-B237. During 1907, there was a 30% decline in tin, a staple export of the SS and a consequent falling off in supplies of that metal, which together represent a decrease in the trade of the Colony of an average of £4,000,000 per annum or \$35,000,000.

¹⁹⁸ANM/KL SS 17 : LCP, 2nd December, 1907, pp. B238-B239.

¹⁹⁹ANM/KL SS 17 : LCP, 3rd December, 1907, pp. B242-B244; 3rd December, 1907, pp. B242-B244; 6th December, 1907, pp. B246-B248; 9th December, 1907, pp. B249-B252; 3rd December, 1907, pp. B242-B244; 10th December, 1907, pp. B254-B255; 13th December, 1907, p. B259; 20th December,

Similarly in the FMS, until the middle of 1910, a carbon copy of the SS's Stamp Enactment had been in force for years but not federalised. Documents duly stamped and certified by the collector of stamp duties in one States were not legally accepted in any other FMS. The government of the FMS informed the council that a Federal Stamp Enactment was being considered pending the outcomes of the report of the Joint Commission which was inquiring into the question of assimilating and federalising the stamp laws of the SS and FMS.²⁰⁰

Subsequently, the *Stamp Enactments, 1897 (Amendment Enactment)* was tabled in the Federal Council with the objective of increasing the revenue derived from stamp duties, the principal alteration being the raising of duty payable in respect of the estates of deceased persons. The Committee recommended that the duties on application for administration and probate should be raised in order to provide further revenue for the SS whilst another Committee which was sitting at the same time in Kuala Lumpur recommended revision of the Stamp law of the FMS on various points but apparently not an increase in rates.²⁰¹ As expected in previous encounters, the proposal had sparked representations from some of the unofficial members who argued that the penalty for not stamping documents was too harsh especially with regard to the death duties.

1907, p. B262; 11th October, 1907, p. C143, "Address of Governor Sir John Anderson at a Meeting of the Legislative Council". The Governor says, "An important bill to consolidate and amend the law relating to Stamps and to increase the duties derivable from this source has recently been introduced". See also *ANM/KL SS 17* : LCP, 2nd December, 1907, pp. C196-C198, "Report of Sub-Committee of Singapore Chamber of Commerce on Stamp Bill"; 9th December, 1907, p. B250, for tax rates of stamp duty; 1907, pp. C198-C199 "Correspondence of Secretary and Treasurer of The Singapore Chamber of Commerce to the Governor of the SS, dated 19th October, 1907"; 1907, pp. C199-C201, "Correspondence from Secretary and Treasurer of Fire Insurance Association of Singapore to the Governor of the SS"; 1907, pp. C201-C202, p. C204 "Observations of the Singapore Bar Committee on Stamps Bill, dated 16th October, 1907 and dated 18th November, 1907"; 1907, pp. C203-C204, "Letter Colonial Secretary of the SS to Bar Committee, dated 7th November, 1907".

²⁰⁰ *ANM/KL P/P3*: PFC, 2nd May, 1910, p. B42. At the same time, the idea of federalisation was extended to liquor duties to prevent the duty on the same liquor being paid in two states simultaneously. See double duty case in Selangor and Pahang. Cf., pp. B42-B43; 31st October, 1910, "Address by the High Commissioner of the FMS", p. B65.

²⁰¹ *ANM/KL P/P3* : PFC, 27th April, 1915, pp. B8-B10, "The Stamp Enactments, 1897, Amendment Enactment". The proposed higher rates were those recommended by a Committee which sat in Singapore in 1910 for many months to devise amendments to the Stamp Ordinance of 1907 of the SS.

By this time, the Colony and the FMS economy and labour force were totally dependent upon immigrants who were not permanent residents and just interested only in profitable ventures to be brought back to their mother countries. Despite a vast opportunity to generate huge profits in an infant stage of a very light system of indirect taxation, any attempt to increase taxes or expand the tax base would be austere represented no matter whether it was a justified measure or not. For instance, even though it was agreed that the financial situation was bad and it was necessary to raise revenue, the government was cautioned that this measure would result in an exodus of Chinese capital from the Malay peninsula to China. It was from the majority of Chinese the government generate most of its revenue. In the case of Chettiars, the persons who worked in Malaya did so under a firm's name and received their bonus when they returned to India. If a Chetty died, it invariably transpired that he was trustee or agent for the firm. With regard to Englishmen, tax evasion took a different form. When they acquired property in Malaya, such as an estate, sooner or later, they would transfer it into a limited company and become majority shareholders. In reference to the Malays, most of them were ignorant and for reasons unknown did not involved themselves in commercial ventures except the royal family and the Malay Chiefs who frequently "Ali Baba"²⁰² their business to immigrants. There were not many rich Malays that would be subject to estate duty. As such, in lieu of the possibility of massive tax evasion which was difficult to control, it was suggested 3% was quite heavy enough.²⁰³

²⁰²The term "Ali Baba" is a common widely used in Malaysia to describe a person who proxied his business opportunity in order to gain fast profit without being actively involved in the ventures.

²⁰³*ANM/KL P/P3* : PFC, 27th April, 1915, pp. B8-B11, "The Stamp Enactments, 1897, Amendment Enactment". It was proposed that the penalty for failure to stamp document be \$50. Arthur Noel Kenion argued that comparatively in the Indian Enactment, the penalty was Rs 5 where the duty was not more than Rs 50. As such a \$50 penalty would be equivalent to ten times the amount of duty. A proper penalty would be \$5. After few amendments, the bill was passed as Enactment No. 4 of 1915.

Global Anti-Opium Movement: Effect on Tax Policy

Until the end of 1908, the system of taxation of the SS and FMS was heavily dependent upon revenues from opium and liquor which accounted for more than 50% of the total revenue generated by the SS but less than 50% of the FMS.²⁰⁴ Under the system of light indirect taxation in the SS and the Malay peninsula majority of the people especially the European and Chinese traders who generated business profits did not contribute proportionally to the State. The Colony and the FMS financial health were virtually secured by the coolies' addiction to the opium and liquor.

It was without doubt that the worldwide economic depression which set in 1904 had not come to an end in 1905. As a result, the economy of the Colony and the FMS had been significantly effected which resulted in a series of failure in the opium farming system in 1906 with the inability of the opium farmers in Singapore, Penang and Kedah to satisfy the contracts. To protect the government revenue, a counter measure was instituted through a bill designed to consolidate and amend the law for collecting excise revenue upon opium and liquor.²⁰⁵ In spite of various changes in tax regulations to recoup potential revenue losses by consolidating the Opium and Liquors Ordinances and at the same time the increased duties, estimated revenue of the SS for 1906 was \$9,479,064 which fell short of the original estimate for 1905 by \$2,041,291. The estimates for 1906 showed a loss of \$1,344,000 on the Singapore and Penang Opium

²⁰⁴ *ANM/KL SS 17* : LCP, 28th October, 1908, p. B114, "Supply Bill". See Appendix 2.1.

²⁰⁵ As it was a well known fact that if two farms were not in the same hands, very often several members of the monopoly were interested in both Farms and an endeavour had been made in this bill to make the alterations in it harmonise with the alterations made in the Liquors Bill. *ANM/KL SS 17* : LCP, 11th May, 1906. For accounts on losses incurred by the farmers, see *ANM/KL SS 17* : LCP, 13th July, 1906; 22nd January, 1904, Appendix, "Rules made by the Deputy of His Excellency the Officer Administering the government in council under Section 14 of *The Opium Ordinance 1894*"; 10th February, 1905, pp. C22-C24, "Opium Farmer, Penang, to Governor Sir John Anderson, dated 23rd July, 1904"; 10th February, 1905, p. C21, "Memorandum from the Penang Opium and Spirit Farmers to His Excellency the Officer Administering the government of the SS," dated 6th April, 1904; 10th February, 1905, pp. C24-C26, "Opium Farmer, Penang, to Colonial Secretary, dated 3rd August and 10th October, 1904 and 24th January, 1905"; 11th October, 1907, pp. C150-C151, "Address of His Excellency Governor Sir John Anderson at a Meeting of the Legislative Council".

Farms.²⁰⁶ Despite enforcement of the new *Ordinance XX of 1906*, the government suffered a heavy loss of \$888,000 in the revenue from the opium farms.

Efforts to ban the evil opium usage had been mooted since 1894 when, as a result of public representations in England, the Royal Opium Commission was appointed to study the effects of opium smoking to individu and its effect on the revenue and economy of the Imperial Government's Colonies and Protectorates.²⁰⁷ However, probably due to the government's bureaucracy, the matter was put into abeyance until 1908. Thereafter with the revival of a widespread of anti-opium movement locally and abroad, especially in the United Kingdom which resulted in a shifting of public attitude and awareness on the physical and injurious effects caused to addicted smokers, the Parliament of the Imperial Government in London mandated the newly appointed Opium Commission to study the social impact on society of opium smoking in the SS and the FMS.²⁰⁸ The Opium Commission in the course of deliberations found that majority of the addicts were Chinese with a few Malays, particularly members of the royal family. The Malays, being Muslims, were barred religiously from these addictive acts. At this juncture, the government's tax policy in relation to the tainted revenue generated from opium consumption was a "double-edged sword" policy as illustrated by E.C. Ellis, unofficial council member, who ironically painted a humorous picture of the Secretary for Chinese Affairs going around with a Bible in one hand and a *chandu*(*opium*) pot in

²⁰⁶ *ANM/KL SS 17* : LCP, 6th October, 1905, "The Governor's annual address to the Legislative Council". Of the loss on the opium farm, \$720,000 was the amount which the government had allowed the farms to defer payment during the year. The government was highly confident that the deferred payment which bore 5% interest would be recovered fully in 1907 due to the the present low price of opium which had subsequently given better prospects to the farms.

²⁰⁷ *PP (Accounts & Papers, Great Britain)*, Vol. lxii, 1894, "Minutes of evidence taken before the Royal Commission on opium from 29th January to 22nd February, 1894, with Appendices "Proceedings, Appendices with Correspondence on the subject of opium with the SS and China".

²⁰⁸ *ANM/KL SS 17* : LCP, 1st October, 1909, p. B153; *ANM/KL SS 17* : LCP, 28th October, 1908, p. B100, "Supply Bill".

the other.²⁰⁹

The Reports of the Opium Commission recommended that a government monopoly for the preparation and distribution of chandu be substituted for the existing farm system so that the government could regulate the price of chandu by increasing the price hoping that it would eventually suppress the usage of it. However, due to the inefficiency of the government machinery, the new system backfired; it had led to major losses in revenues and a correspondingly increased expenditure. The government was cautioned that any further restriction on consumption of chandu, apart its devastating effect on the generation of revenue, would lead to greater use of *morphia*, the smuggling of which, so long as it can be purchased freely in Europe, Japan and elsewhere, it was impossible to condone. On the other hand, the under previous farm system, the farmers were stimulating and encouraging the consumption of chandu.²¹⁰

Until the end of 1908, the depressed state of the United Kingdom markets further exacerbated the economy of the Colony and the FMS which resulted in the lowest prices for produce realised for many years, and although the volume of produce for the Continent had been more than maintained, both the United States and the United Kingdom had restricted their demands.²¹¹ With potential decrease in revenue compounded with an additional burden of the compulsory military contribution of 20% of total revenue, the Colony and the FMS appeared to be drifting into a state of poverty. The only possible solution to prevent huge deficit and massive retrenchment was in the

²⁰⁹ *ANM/KL SS 17*: LCP, 1st October, 1909, p. B158. See also *PP (Accounts & Papers, Great Britain)*, Vol. lxii, 1894, "Minutes of evidence taken before the Royal Commission on opium from 29th January to 22nd February, 1894, with Appendices", "Proceedings, Appendices with Correspondence on the subject of opium with the SS and China".

²¹⁰ Governor of the Straits Settlement to Secretary of State for the Colonies, despatch No. 424 of 12th November, 1908, pp. B151-B152, "Supply Bill".

²¹¹ *ANM/KL SS 17*: LCP, 2nd October, 1908, p. C140, "Address of His Excellence the Governor Sir John Anderson at a meeting of the Legislative Council". Lower values of tin were seen in a decline of \$7.5 million in imports into Singapore and nearly \$8 million in exports, and by only \$1.75 million in imports into and exports from Penang. The quantity of tin exported from Singapore fell off by 3.5% while the export from Penang advanced by 27%.

direction of the military contribution to the Imperial government in London.

By October 1909, the SS government decided under protest to concur with the recommendations of the Opium Commission which was being adopted by the Imperial Government in London. In a despatch to the Secretary of State for the Colonies, the Governor expressed his opinion:²¹²

“...opium smoking to the extent indulged in by the working coolie class is comparatively harmless. It is suggested that we are going to give up a large portion of our revenue, at a time when there are heavy calls upon it, to make these people thrifty, and make them spend their money without wasting it, because an economic evil is the only one that is left?”

Following the footsteps of the SS, by November of 1909, in view of the abolition of the opium farm by the end of 1909, the FMS government also aversely decided that it was timely not to farm out the revenues derived from liquors, but to collect those duties themselves through an officer to be appointed for that purpose. Accordingly, to substantiate with the shift in tax policy, the Liquors Revenue Bill was amended on 10th December of 1909.²¹³ By this time, it appeared that there was no standardisation of duties paid amongst the FMS. The rate of duties on all dutiable liquor in Pahang was doubled.²¹⁴ Subsequently, the government decided to take over the Selangor Spirit Farm. As a result of the abolition of the farm system, revenue generated from the heading of “Licences and other excise duties” in the FMS dropped from \$4,442,273 in

²¹² *ANM/KL SS 17*: LCP, 28th October, 1908, p. B106, “Supply Bill”. See also correspondence of the Governor of the Straits Settlement to Secretary of State for the Colonies, despatch No. 424 of 12th November, 1908 and reply of the Secretary of State, despatch No. 8 of the 8th January, 1909, regarding the Report of the Commission appointed to enquire into matters relating to the use of opium in the SS and the FMS, in *ANM/KL SS 17*: 5th March, 1909, pp. C22-C27; Enclosure to Despatch of 12th November, 1908, pp. C28-C44; LCP, 10th December, 1909, pp. B212-B213; LCP, 1st October, 1909, pp. B126-B128, pp. B151-B129, “Supply Bill”.

²¹³ *ANM/KL SS 17*: LCP, 12th November, 1909, p. B188; 3rd December, 1909, pp. B209-B211; 10th December, 1909, pp. B212-B213; 5th July, 1912, pp. B56-B57; LCP, 11th March, 1910, p. B3.

²¹⁴ *ANM/KL P/P3*: PFC, 2nd May, 1910, p. A22. A case of refund claimed by the Selangor Spirit Farmer that the duty had been paid in Pahang, reflected this situation. See also notification relating to the retail price of government chandu that was tabled in the Federal Council meeting on 2nd May, 1910

1908 to estimated \$2,838,751 in 1909.²¹⁵

Meanwhile in the SS, owing to the anticipated loss of revenue on opium which was impending, and owing to the large amount of public works which had to be carried out after increasing the stamp duties the government hurriedly decided to impose a duty of 5% per gallon on all petroleum imported into and consumed in the Colony. Prior to late 1909, revenue generated in association with petroleum was from licences issued to petroleum stores under the provisions of the *Petroleum Ordinance of 1896*. In order to generate additional revenue of \$300,000, the duty of 5% would be regulated by the newly legislated provisions of *Petroleum Revenue Ordinance*. This new tax, an entirely a consumer's tax in nature, was anticipated be easily collected and not to interfere with the freedom of the port. To convince the council members, the Colonial Secretary displayed the statistics of petroleum taxes collected in other colonies.²¹⁶

It was clear at the onset that the government had intended to force through this legislation without any reservation to the opinion of those who were interested in petroleum trade in respect of what the effects of taxation on the trade would be. Given a few moments to spare, Tan Jiak Kim, unofficial council member, took the opportunity to disclose the skewedness of this tax instrument. The council was cautioned that most of the upper class people were using electric light and gas, but the poorer classes in the towns, owing to higher cost of electricity, were compelled to resort to "minyak tanah

²¹⁵ ANM/KL P/P3: PFC, 11th December, 1909, p. B15. However, from opium, it was anticipated that \$2,858,000 would be received, an increase of nearly \$800,000 on the receipts of 1908.

²¹⁶ ANM/KL SS 17 : LCP, 26th November, 1909, pp. B197-B199.

Colony	Petroleum Tax Imposed (pence per gallon)
SS	Proposed at 1.4
Ceylon	4
West Indies	3.0 to 4.0
India and Malta	1

(kerosene)” a derivative of petroleum. Despite the fact that Bill was tabled at a very short notice using the certificate of emergency, the government contended that, under the pretext of preserving equality, the burden of the tax should be levied equally on the rich and the poor of which could be justified by increasing the cost of electric light and gas.²¹⁷ During the discussion on Supply Bill of 1911, the petroleum tax was estimated to bring in \$193,200, and at this juncture, the Acting Colonial Secretary pledged that with the introduction of this tax, it was possible to defer the evil day of the income tax referred to by the Governor which was suggested in 1908.²¹⁸

In lieu of the policy of a steady and progressive discouragement of opium smoking adopted by the British government, the SS government started to take over the monopolies in Malacca and Singapore with effect from 1st January, 1910.²¹⁹ Similarly in the FMS, the farm was taken over by the FMS government with effect from 1st January, 1912. For this purpose, the Legislative Council approved a sum of \$350,000 being paid into a special advance account to meet the initial expenditure incidental to the establishment of a government monopoly of the sale and manufacture of chandu in Singapore and Malacca. During the first four months of its implementation, the new farm system still appeared to be in an instable state. The price of chandu sold was altered too frequently by the government, and the prices of opium was more likely to rise than to fall. In effect, the price instability and destruction of opium crops in China and the restriction of the supply owing to the agreement made by India with China had caused the price of opium to rise rapidly which naturally led to an increase of smuggling

²¹⁷ *ANM/KL SS 17* : LCP, 26th November, 1909, p. B200. The Governor assured the council that this tax instrument was limited to “mineral oils” only, and not on coconut oil which was widely used by the poorer classes to light their huts. However, the Governor iterated that the government, in the future, might include coconut oil under the scope of the tax instrument.

²¹⁸ *ANM/KL SS 17* : LCP, 23rd September, 1910, p. B113, “Supply Bill”.

²¹⁹ *ANM/KL SS 17* : LCP, 26th November, 1909, pp. B204-B207; 3rd December, 1909, pp. B208-B209; 13rd September, 1910, p. B109. Even by September of 1910, the farmers under previous farm system had yet to pay the government a deferred payment amounting to \$806,000. For rules under *The Chandu Revenue Ordinance 1909*, see Notification No. 452 in the Gazette of the 8th April, 1910 in *ANM/KL SS 17* : LCP, 11th April, 1910, p. B23.

and the further use of other dangerous drugs in the place of chandu.²²⁰

At the same time, to administer and facilitate the implementation of a new opium farm monopolised by the government a new department, Government Monopolies, was formed which was responsible to the Secretary for Chinese Affairs. In addition, to conform with the recommendations made by the Opium Commission which were adopted earlier by the Imperial Government, the Acting Attorney General proposed amendments be made to the Opium Ordinance of 1906.²²¹

The move initiated by the SS government was then followed by the FMS government. In December 1909, using the certificate of urgency, the Opium and Chandu Enactment was amended with effect 1st January, 1911 with the purpose of establishing a government monopoly of the sale of chandu in certain districts in the FMS including prohibiting the importation of chandu administered by the newly formed Government Monopolies Department. In its initial stage, the government extended its sole right of importing chandu into the coastal areas of the FMS, and instead manufacturing its own chandu the government decided to allow the SS government to manufacture it and export it to the FMS due to a large stock in hand available in the SS by the end of 1910. In fact the SS government intended to export to the whole Protected Malay States.²²²

²²⁰ *ANMKL P/P3* : PFC, 25th July, 1912, p. B46, "The Opium and Chandu Enactment, 1912"; 25th July, 1912, pp. B55-B56, "High Commissioner Address"; 13th November, 1912, pp. B87-B105, "The Supply Enactment, 1912"; *ANM/KL SS 17* : LCP, 1st October, 1909, pp. B126-B128; 29th October, 1909, p. B174; 11th April, 1910, pp. B23-B24. The revealing situation was supported by statistics of some prisoners who appeared to show signs of being injected with *morphia*. Regarding the measure to stabilize the prices of opium, the government had the cooperation of the governments of Perak, Selangor, Negeri Sembilan and Johore.

²²¹ See *ANM/KL SS 17* : LCP, 1st October, 1909, p. B131, "Supply Bill"; 8th October, 1909, pp. B137-B138 for further detailed of the amendments.

²²² *PP (Accounts & Papers)*, 1912-1913, Vol. lxiii, "Annual Report of the SS, 1911"; *ANM/KL SS 17* : LCP, 13rd September, 1910, p. B110; *ANMKL P/P3* : PFC, 19th January, 1911, p. B25; 13th December, 1909, pp. A5-A6; 15th December, 1909, p. B30; 31st October, 1910, pp. B85-B86, B98-B99. The Federal Coast Chandu Enactment, 1909 was passed as Federal Enactment No. 4 of 1909. At the same time, "The Chandu Shops Enactment, 1906 was amended in 1909 to become Federal Enactment No. 6 of 1909. Cf., p. B36. See also Opium and Chandu (Amendment) Enactment published via Enactment No. 6 of 1910. Cf., B99. The government estimated that the revenue generated in 1911 under the

In the FMS, at the instance of the Commissioner of Trades and Customs, following in the footsteps of the SS, the *Opium and Chandu Enactment, 1910* was amended to accommodate the new farm system. It was obvious that the abolishment of the farm system had led to chandu being sold on the black market where the racketeers were able to purchase chandu at a lower price than the government purchased price. In conjunction with the new era, the system of gaming farms was also abolished with effect from 1st January, 1912 as result of the Malay rulers voicing their desire for public gaming to be totally abolished.. Even though this decision meant a loss of revenue to the FMS of more than \$1,800,000, it had the support of the leading Chinese employers of labour in Malaya and was in accordance with the announced policy of the government with regard to public gaming. At this juncture, even though by 1912, the FMS financial position was excellent, despite the loss of revenue from opium, the Chief Secretary foreshadowed further taxation to members of the council.²²³

During the discussion on the *Supply Bill of 1910*, the SS government cautioned the council on the imminent decreases in opium revenue for years ahead, regardless whether the farm system was continued or whether the government took it into its own hands. Looking at the prospect of a bleak financial future, the government had even contemplated that there were other articles of consumption that might be taxed without interfering with the freedom of the ports, and the government proposed, after the Estimates of 1910 had been considered by the Select Committees, to introduce the necessary legislation for imposing taxation which would bring in about \$300,000 per annum. With the hope that this measure be adopted, the government was confident that the deficit for the financial year 1910 would be reduced by about \$400,000. The early

heading "Licence, Excise and internal revenue" would be \$6,760,851. Of this, \$3,946,520 was attributed to the sale of chandu.

²²³ ANMKL P/P3 : PFC, 25th July, 1912, p. B46, "The Opium and Chandu Enactment, 1912", pp. B55-B56, "High Commissioner Address"; 13th November, 1912, pp. B87-B105, "The Supply Enactment, 1912"; 13th November, 1912,, pp. B107-B115, "The Common Gaming House Enactment, 1912", p. B93; 25th July, 1912, pp. B50-56, "High Commissioner address". Export of rubber and tin had increased significantly. Sale of chandu also had increased. Overall trade in the four States had continued to increase too.

part of 1909 was confronted with diminution of revenue due to the inability of the Opium Farmers to pay full rent of their farms. This event had led the government to curtail expenditure to the smallest possible dimensions consistent with efficiency, and many public works for which the Supply Ordinance had made provision were postponed until the budget deficit was restored to a reasonable position. The events of 1909 had a far reaching effect; the year 1910 would be an acid test as to whether it would be necessary to have recourse to further taxation.²²⁴

In the SS, by October of 1909, a series of debates on the possibility of imposing new taxation to substantiate the loss from opium revenue was taken. During the second reading of the Supply Bill for 1910, John Turner, unofficial council member, who had always advocated a free port doctrine, suggested that a judicious scheme of taxation on *bonê fide* imports not only could generate sufficient revenue for the government requirements but by doing so, many valuable industries would spring up in the Colony and others would be revived, thereby, furthering its real prosperity. To carry out a scheme successfully for import duties, an understanding with the FMS and Johore was deemed paramount, but that apparently had been done in the case of opium and could no doubt be arranged for other. In response to the suggestions, the Governor replied that the government would prefer to adopt a "wait and see" policy after the matter had been dealt with by the Chamber of Commerce and the Straits Association. In addition, since the SS were dependent upon the cheapness and rapidity of the facilities available to the entrepôt and transshipment trade, whatever restrictions applied by way of a Custom House would inevitably interfere with both trades. In this respect, the Governor preferred income tax be considered instead. However, during the meeting of the Legislative Council on 22nd October, 1909, the motion mooted by John Turner and then seconded by the Acting Colonial Secretary, was tabled in the council one day after it was mooted by John Turner. The critics argued there was no way the Chamber of Commerce

²²⁴ANM/KL SS 17 : LCP, 1st October, 1909, pp. B128-B131, "Supply Bill"; 1st October, 1909, pp. C92-C99, "Address of His Excellency the Governor Sir John Anderson at a meeting of the Legislative Council".

and the Straits Association could have dealt with the matter in such a very short notice. There could be no other reasons that this sort of “ad-hoc tax policy” pointed to a conspiracy to make John Turner a tax policy scapegoat which finally exposed the government’s dire need to balance its budget.²²⁵

When the *Chandu Revenue Bill* went into Committee, another proposal was tabled. T.S. Baker, unofficial council member, who in the last meeting boldly suggested that in place of a monopoly system for opium, the government should impose a heavy import duty on opium, decided later that import duty would be fatal to the collection of opium revenue. As an alternative, he suggested an excise tax be imposed on opium. Taking the consumption figures of 1908, a 200% excise tax would yield a moderate tax of approximately \$3,258,000 per annum which was much more than what the farmers were contented to pay under the previous farm system. In addition, it was also proposed to introduce licences for manufacturing and sale of chandu which might be regulated by legislative framework. The excise tax would be simple to levy upon the opium when it was transferred from the bonded warehouse. The tax for manufacturing could be very easily levied by a process of government stamps where every pot or vessel for sale of chandu would be with a stamp of a special design. These proposals, however, received wide opposition from council members. The Governor believed that in every instance in which the article taxed was not an article ready for the consumer, the system was subject to massive tax evasion. On the contrary, without proper a Custom Establishment, the proposal would only attract massive smuggling of opium into the Colony.²²⁶

Until the end of 1910, for reasons which were unclear, the government did not exploit at least the major commodities still susceptible to utilization as sources of revenue--tea, tobacco and matches. In fact in taxing those items there arose no question

²²⁵ANM/KL SS 17 : LCP, 22nd October, 1909, p. B168, “Taxation of Imports”; 1st October, 1909, pp. B161-B167, “Supply Bill of 1910”.

²²⁶ANM/KL SS 17 : LCP, 22nd October, 1909, pp. B170-B171; 22nd October, 1909, pp. B169-B170.

of preference or protection. However, the Colonial Secretary was pessimistic that those commodities would be enough to restore the financial health of the Colony. The government contended that the generated additional revenue would be scarcely sufficient, and in connection with the collection of that sum, it was undeniable that great inconvenience would be inflicted on the trade, and great expense would be required in the way of bonded warehouses and the general paraphernalia of collecting the duty.²²⁷

By the middle of 1912, the demise of the opium industry was inevitably imminent. The consensus of civilised opinion was that the consumption of opium was a vice and it had to be restricted as much as possible. Subsequently, the Hague Convention, which was appointed on the subject, had informed the SS government of what had been done. Surprisingly, as a result of this directive, the government raised the price of chandu again. Since May of 1912, the price of prepared opium had been increased by 15%. On the other hand, in order to recoup their massive losses in revenue, both governments gradually built up an Opium Revenue Replacement Reserve Fund.²²⁸

²²⁷ *ANM/KL SS 17* : LCP, 23rd September, 1910, pp. B114, C235-C246, "Address of the Governor Sir John Anderson at a meeting of the Legislative Council"; 7th October, 1910, pp. B123-B124, "Supply Bill"; 18th November, 1910, p. B144.

²²⁸ *ANM/KL SS 17* : LCP, 10th May, 1912, p. B24; 15th November, 1912, p. 159; 4th October, 1912, p. C93, "Address of His Excellency the Governor Sir Arthur Young at a meeting of the Legislative Council". In the SS, in 1920 almost 20 million dollars was accounted for by the opium monopoly but in 1937, the revenue dropped to \$8,839,389 or 23.7% of the total receipts. C. Reps, *Annual Reports on the SS*, 1918-39.

War Tax Policy--War Taxes and War Loan (1914-1918)

When the war in Europe was declared, the London Metal Exchange was temporarily closed and tin became unmarketable. As a result of the disastrous drop of tin prices, the government decided to purchase tin from the local market at \$60 per pikul and wolfram of which the price per pikul varied with its quality. Even though this policy appeared to be successful, further deterioration of tin prices forced the government on 15th October, 1914 to reduce the price to \$57 per pikul. In addition to this policy, the government had to repatriate jobless miners to their country of origin which had caused considerable riots and robberies. Similarly, in the case of the rubber industry, which also need a helping hand from the government, the government decided to advance 30 cents a pound upon the produce of the estates.²²⁹ Prior to the war, the government had contemplated levying a tax on petroleum and beer similar to that already imposed in the SS. However, with the deterioration of financial health of the FMS compounded by the falling prices of tin and rubber, and the decreasing consumption of opium, the government felt that the prevailing situation warranted for further taxation and that all annual recurrent expenditure be cut across the board.²³⁰

To supplement this deficit, the *Stamp Enactments, 1897 (Amendment Enactment)* was tabled with the objectives of increasing the revenue derived from stamp duties, the principal alteration being the raising of the duty payable in respect of the estates of deceased persons.²³¹ As usual, the proposal had sparked representations from some of the unofficial members who argued that penalty for not stamping documents was too harsh. With regard to the death duties, there were considerations against such heavy

²²⁹ *ANMKL P/P3* : PFC, 3rd November, 1914, pp. B6-B11, "The High Commissioner Address". See also *ANMKL P/P3* : PFC, 3rd November, 1914, pp. B23-B25, "The Supply Enactment"; 4th November, 1914, p. B33.

²³⁰ *ANMKL P/P3* : PFC, 3rd November, 1914, p. B11, "The High Commissioner Address"; *ANMKL P/P3* : PFC, 3rd November, 1914, p. B23, "The Supply Enactment". During the tabling of the Supply Bill for 1915, the government announced the imposition of petroleum and beer (malt liquor). It was estimated that the former would generated \$242,160 per annum and the latter would generate \$302,450 per annum.

²³¹ *ANM/KL P/P3* : PFC, 27th April, 1915, pp. B8-B10, "The Stamp Enactments, 1897, Amendment Enactment".

taxation. Even though it was agreed that the financial situation was bad and it was necessary to raise revenue, the government was cautioned that this measure would result in an exodus of Chinese capital from Malaya to China. It was from the majority of Chinese that the government generated most of its revenue. As such, in lieu of the possibility of tax evasion, it was suggested 3% was quite heavy enough.²³²

In the SS, during the meeting in 1917 after the *Bill for Imposing a War Tax on the Basis of Income* was tabled for reading the first time, the Attorney General tabled a *Tobacco Duties (Amendment) Bill* be read for the first time for the purpose of amending the *Tobacco Duties Ordinance, 1916* and after the third reading, it was passed. The main provision of this bill was to impose additional duty of 50% on the existing duty on imported tobacco so as to raise additional revenue and increase the annual contribution to the Imperial Government toward the prosecution of the war. At the same time, the duties on liquors were also increased. This increase was supposedly to be standardised with the rates already imposed by the FMS government.²³³

Subsequently, following the measure adopted by the SS, by the end of 1914, the Chief Secretary, who had earlier forecast further taxation in 1912, reminded the council that in coincidence with the advent of losses from opium revenue becoming a reality, further taxation was absolutely necessary; not to recoup from losses in opium revenue but under the circumstances of the war which had been forced upon the United Kingdom in Europe.

²³² *ANM/KL P/P3* : PFC, 27th April, 1915, pp. B8-B11, "The Stamp Enactments, 1897, Amendment Enactment"; *ANM/KL SS 17* : LCP, 14th October, 1918, p. B128, "Supply Bill for 1919". It was proposed that the penalty for failure to stamp document be \$50. Arthur Noel Kenion argued that in comparison with the Indian Enactment, the penalty was Rs 5 where the duty was not more than Rs 50. As such a \$50 penalty would be equivalent 10 times the amount of duty, a proper penalty would be \$5. After few amendments, the bill was passed as Enactment No. 4 of 1915. See also page 58 for the methods of tax evasion employed by the Chettiars and the Englishmen.

²³³ *ANM/KL SS 17* : LCP, 8th January, 1917, pp. B19-B21. The increase was on all tobaccos except the native tobaccos and the cheap European tobaccos.

Subsequently, as forecast earlier by the Chief Secretary for further taxation, by March 1915, an increase of 60% in the duty on spirits and samsu (rice wine) was imposed and the duty on beer, cider and perry was raised from 24% to 48% per gallon. Duties were also extended to tobacco, cigars and cigarettes which were estimated to generate additional revenue amounting to \$1,000,000 per annum. In addition, since the revenue from chandu had greatly diminished and the tin market was still in a precarious condition, unofficial members of the council suggested an increase in tax rates on liquors, tobacco and death duties.²³⁴

Meanwhile, in late 1916, the issue of War Taxes and War Loan was also being debated in the Federal Council of the FMS. For the past two years, no further reference was made to special war taxation. Remittance to the Imperial government for the purpose of prosecuting the war was in the form of local War Loan and voluntary contribution. Subsequently, a Taxation Committee of the FMS was appointed and during its first meeting on 7th December, 1916 at Kuala Lumpur, the committee recommended an increase in almost all existing instruments of taxation and in addition recommended a partial imposition of income tax. The committee deliberated that if the sum collected from the increased taxes was more than \$5 million, there was no reason to limit the gift to the Imperial government to \$5 million. The unanimous recommendations of the Taxation Committee with sweeping effects across the board can be epitomised as follows:²³⁵

1. Under the assumption that tin ores be raised from 70% to 72%, and the proceeds be devoted solely to war purposes, this measure should be regarded not entirely

²³⁴ *ANM/KL P/P3* : PFC, 16th November, 1915, pp. B21-B25, "The High Commissioner's address"; "Despatch, Arthur Young, High Commissioner for the FMS to Secretary of State for the Colonies", 3rd December, 1914, pp. C24-C26; "Despatch Secretary of State for the Colonies to the High Commissioner for the FMS", 4th February, 1915, pp. C26-C27.

²³⁵ *ANM/KL P/P3* : PFC, 28th December, 1916, pp. C79-C81; 25th July, 1912, pp. B55-B56, "High Commissioner Address"; 16th November, 1916, p. B55; 28th December, 1916, "Report of the committee appointed in accordance with a resolution of the Federal Council passed on the 14th December, 1916, to consider the question of a contribution to the Imperial Government", pp. C79-C82. The committee headed by the Chief Secretary, consisted of 19 members.

as a war measure but the question of its retention be considered by the government as a matter of policy. However, during its second meeting on 18th December, 1916, the proposal was amended such that this issue be decided by the government as a matter of policy.

2. Export duty on rubber be doubled if the price was 2s. 6d. a pound or under and that it could be trebled if the price exceeded 2s. 6d. a pound. Furthermore, it was recommended that applications for relief from the payment of the surtax might be dealt with by respective Residents. The question regarding the method of dealing with individual planters and Companies, who were at that time paying income tax and possibly excess profits tax, was considered by the Committee. It was a general opinion of the Committee that reliefs from payment of the super-tax for both tin and rubber be granted either wholly or in part in such cases and the question be referred to a sub-committee for further consideration.
3. The duty on "native tobacco--Javanese, Chinese and Indian origin" be increased to 50% from \$10 to \$20 a pikul, and that on other grades of tobacco and cigars be increased by about 50%--actual rates in such case to be settled by a sub-committee.
4. A suggestion that a combination of 10% of the revenue derived from opium and liquors, earmarked for the contribution, was approved by the Committee.
5. An import duty of 10% *ad valorem*²³⁶ be imposed on all motor vehicles, and non-motorised vehicles such as bicycles, tricycles, and accessories, including tyres.
6. Import duty on motor spirit be raised 50% from 5 cents to 10 cents a gallon. Taxes on cars, etc., were also increased.
7. An import duty of \$60 a case of 7,200 boxes on matches was recommended be imposed.

²³⁶ *Ad valorem* tax is a tax proportional to the price of the object being taxed. This is contrasted with a "specific tax", at a rate per unit of quantity, independent of the price. *Ad valorem* taxes are often preferred to specific taxes because specific taxes are considered unfair as they fall proportionately more heavily on poorer consumers who choose cheaper and lower quality goods. *Ad valorem* taxes are also preferred because their real value is not eroded by inflation. John Black, *Oxford Dictionary of Economics*, (Oxford University Press, Oxford, 1997) p. 6.

8. A tax of 1 cent per small bottle and 2 cents per large bottle be imposed on mineral and aerated waters. However, during its second meeting, the committee decided to withdraw its proposal to tax aerated waters.
9. An additional tax on cinematograph exhibitions and other places of amusement, including billiard saloons, was recommended. However, the committee felt that it was beyond its power to decide the instrument of taxation through a ticket or an increase in the licence fees.
10. The rate for local telegrams be raised by 1 cent a word with a minimum of 28 cents a telegram. Stamp duties were also increased.
11. The assessment on inhabited houses within Sanitary Board areas be increased by not more than 5% with the proviso that the general rate does not exceed 15%.
12. The duty on tobacco, known as "native tobacco--Javanese, Chinese and Indian" be increased by 100% from \$10 to \$20 a pikul. The duty on other grades of tobacco and cigars be increased by about 50%--the actual rates in each case to be settled by a sub-committee.
13. On the motion by F.E. Mair, seconded by G. Gordon Brown, the European members of the Committee unanimously recommended that an income tax be levied in the case of Europeans at the same rates as were in force in the United Kingdom.

During its second meeting on 18th December, 1916, two major amendments, amongst other mentioned in the foregoing paragraph, recommended by the sub-committee were considered and endorsed by the Committee.²³⁷

1. It was decided to give exemption to tin mine and rubber plantation owners who were subject to income tax in the United Kingdom and other British colonies.
2. It was decided to amend the original recommendation by omitting the words "at the same rates as are in force in United Kingdom" and suggested that income of

²³⁷ *ANM/KL P/P3* : PFC, 28th December, 1916, pp. C81-C82. Clause 1, which was the most important of the four proposed clauses, states that companies, firms or persons claiming exemption from super-tax on tin, tin ore or rubber exported from their mines or estates in the FMS were required to satisfy the Commissioner of Trade and Customs, subject to appeal to an Exemption Board that they were liable for paying income tax in the UK or such country as was notified in the Gazette by the Chief Secretary, on the produce of the mine or estate for which exemption was claimed.

less than \$3,600 per annum be exempted. In addition, the Asiatics were welcomed to pay income tax if they desired to contribute to the war expenditure. Furthermore, the committee was in favour of a Board empowered to deal with petitions for exemption on the ground of economic hardship, etc. They also recommended that differential treatment be accorded to married and unmarried persons with a rebate in respect to children.

Subsequently, on 28th December, 1916, using the *certificate of urgency*, following the recommendations of the committee which was appointed in consequence of a resolution²³⁸ passed by the Federal Council on the 14th November, 1916 to consider the question of a contribution to the Imperial government, the *War Taxation Enactment, 1916* was tabled. Following the example of the SS, before it was tabled, the report of the committee was made public and published in the Press for the purpose of inviting public discussion and representation on the recommendations of the committee. The council was informed that due to the method of raising revenue in the FMS through its main commodities, export duties on tin and rubber, it was difficult to extrapolate an additional revenue that would be generated by the new tax rates and tax on incomes. However, the Chief Secretary believed the increased duties would generate additional revenue at approximately \$4,705,325 if the recommendations of the committee be adopted.²³⁹

Furthermore, the committee also recommended that 10% of the opium and

²³⁸ ANM/KL P/P3 : PFC, 28th December, 1916, pp. C79-C82, "Report of the committee appointed in accordance with a resolution of the Federal Council passed on the 14th December, 1916, to consider the question of a contribution to the Imperial Government". The terms of the resolution were ".....That, whereas it appears to the government that there is a *general wish on the part of the various communities residing in the FMS* that a contribution should be made to the Imperial Government for the prosecution of the war and that special taxation should be imposed for this purpose, this council, being of the same opinion, resolves that a Committee be appointed for the purpose of advising what shall be the amount of such contribution and by what means the money required can best be raised".

²³⁹ ANM/KL P/P3 : PFC, 28th December, 1916, "War Taxation Enactment, 1916", pp. B57-B58; 16th November, 1916, pp. B54-B56. The yield from the increased duties on rubber was modestly calculated on a output of 63,000 tons per year. It was estimated that the output tonnage would increase in the following year. Since the duties were increased, it was also proposed that these companies related to rubber and tin industries were exempted from paying income tax in the United Kingdom as it was thought to prevent all grumbling and gave a sense of fair play.

liquor revenue be devoted to this purpose. Instead of adopting the recommended 10% contribution, the Chief Secretary graciously announced that he was authorised by the High Commissioner of the FMS, Sir Arthur Henderson, on the government willingness to contribute 15%. The committee also recommended an imposition of amusement tax. However, at this point of time, the government was not yet prepared to adopt it but if the council adopted it, it could be done by regulation. In addition the committee also recommended increasing the assessment within Sanitary Board areas on inhabited houses. The government was reluctant to implement this recommendation on the basis that it was untimely and it would definitely fall upon the tenant and not the landlords. In effect the recommendation would only lead to an increase in rent. A.N. Kenion, unofficial council member, cautioned the government that the principles on which the taxation proceeds were excellent if rubber and tin were up to good prices. However, if the prices of the commodities fell to \$70 a pikul, the industries would be struggling to pay the increased duties. However, his suggestion that there would be no duty when a certain limit was reached was rejected by the Select Committee.²⁴⁰

Henceforth, due to the colossal rate of the war expenditure, the committee even suggested raising the railway fares by 50% of which all would be remitted to the Imperial government. A.N. Kenion, supported by Eu Tong Sen, suggested that the fares remain the same but instead the government impose a *red surcharge* on each ticket called the *War Tax* for the purpose of raising additional revenue for the contribution for war purposes. Subsequently, the government explained that other consideration came into the question which had led to a two-fold object in raising the fares even though the new measure would likely lead to a substantial reduction to the number of passengers using the trains.²⁴¹

²⁴⁰ ANM/KL P/P3 : PFC, 28th December, 1916, "War Taxation Enactment, 1916", pp. B57-B58, B60-B61.

²⁴¹ ANM/KL P/P3 : PFC, 28th December, 1916, "War Taxation Enactment, 1916", pp. B58-B59. Based on the revenue generated in 1915 on "Railway Receipts" of \$5 million, the *red surcharge* would generate additional revenue of \$2.5 million. A.N. Kenion's suggestion had the same effect with what the committee recommended. However, in the absence of his basis of argument, it can safely deduced that the "red surcharge" was solely devoted to "War Tax". As such when the war was over, the rate of railway

After consideration of the bill, the government considered that it was best to omit section 23 of the bill and to pass a resolution giving a gift of £500,000 to the Imperial government. In addition, the government decided not to increase the duty on matches because it would fall hard on the poorer classes. At this juncture, the High Commissioner openly admitted that he preferred income tax to the proposed increase in duties. Considering the heavy tax on the Javanese or Indian coolie, A.N. Kenion suggested that the duty be lowered to \$10 a pikul. However, his suggestion was not adopted when the council was briefed that the same tax had been enforced in Kelantan for many years at \$20 a pikul. After various amendments were made to the bill, on the motion of the Sultan of Perak and seconded by the Sultan of Selangor, it was passed as Enactment No. 27 of 1916 effective from 1st January, 1917.²⁴²

By the end of 1917, the British Empire had been at war for more than three years; the *War Taxation Enactment, 1916* proved to generate massive revenues for the FMS government. By November, 1917, the government was optimistic that the taxation under the War Taxation Enactment, 1916 together with the proceeds of increased railway fares and 15% of the net revenues from opium and liquor would generate more than £1,000,000. In addition, the war effort was supplemented by voluntary contributions made as a result of organised collection, such as the Navy Day subscriptions, etc., in the FMS. Paradoxically enough, the imposition of war taxes did not appear to have checked charitable efforts in aid of the various funds. Surprisingly, in November 1917, due to the amount generated by the War Taxation Enactment, 1916 exceeding the estimated figures, the Sultan of Perak moved that the council resolved for

fares would be back to normal again after the "War Tax" was repealed. However, under the committee's recommendation, previous tax policy had proved that no tax rates had been reduced after the war was over.

²⁴² *ANM/KL P/P3* : PFC, 28th December, 1916, "War Taxation Enactment, 1916", pp. B58-B62. Despite A.N. Kenion's statement, "....The traditional British policy has never to send money from the colonies home to the mother country.....", the council resolved that a contribution of £500,000 be made from the funds of the FMS during the year 1917 to the Imperial government towards war expenditure. See also *ANM/KL P/P3* : PFC, 13th November, 1917, "Address of His Excellency the High Commissioner of the FMS", p. B45.

a contribution of £750,000 for 1918 instead of £500,000 as previously passed in the council resolution of 14th November, 1916. The resolution was passed unanimously.²⁴³

The end of 1917 saw the extent of the war to which had hampered the export of tin and rubber due to the difficulty of shipping to Europe. At the same time, the chandu revenue, which was estimated to generate \$11,330,000 in 1918 (about 1/5th of the total revenue), was subject to a new policy promulgated by the British government to suppress the use of opium by the public.²⁴⁴ The burden of the war grew larger day by day. In its continuous effort to assist the Imperial Government, the *War Taxation Enactment, 1916* was re-enacted as *War Taxation Enactment, 1917* with effect from 1st January, 1918. On 17th November, 1917, the *War Taxation Bill, 1917* was tabled in Federal Council for this purpose. Judging from the brief discussion on the intent of imposing higher duties on tin and rubber, it appeared that the subject was not fully debated when the re-enactment bill was taken. At this juncture, W.F. Nutt, unofficial council member, informed the council that since dividends distribution by tin companies were paid out of capital whilst rubber companies paid dividends out of their revenue, it was a wise decision that rubber could naturally bear higher rates of tax and therefore made a bigger contribution toward the war. Amid the problem faced by the tin industry, and the fact that the cost of labour in tin mines had escalated due to migration of labour to the rubber industry, it was felt that the tin industry could sustain another hike in taxes. On the motion of W.F. Nutt, supported by R.P. Brash, clause 2 of the bill was extended with the insertion with the effect on increased war tax. Finally the bill was passed and became Enactment No. 28 of 1917.²⁴⁵ During the same year

²⁴³ *ANM/KL P/P3* : PFC, 13th November, 1917, "Address of His Excellency the High Commissioner of the FMS", pp. B39-B46. By the end of September, 1916, contributions by various governments had generated \$1,535,940 whilst total subscriptions from private sources in Malaya amounted to \$2,446,144. There was no less than 71 separate funds for various charitable purposes. Amongst other were "Mr. Baker's Fund for Aeroplanes", the "Prince of Wales' War Fund" in the Colony and the FMS, "Our Day Fund of 1916", and the "FMS War Relief Fund". It worth noting that all these monies were remitted to the United Kingdom. See also *ANM/KL P/P3* : PFC, 17th November, 1917, p. B75.

²⁴⁴ *ANM/KL P/P3* : PFC, 13th November, 1917, "The Supply Enactment, 1917", p. B54.

²⁴⁵ *ANM/KL P/P3* : PFC, 17th November, 1917, pp. B77-B78.

revision to the Stamp Ordinance had resulted in an increase of more than \$200,000 in the amount received from stamps, but this source of revenue was really a question of probate. During 1918, a number of big estates that were subject to estate duty fell in and hence a windfall increased in revenue, whilst on Petroleum there was an increase of \$20,200.²⁴⁶

By the end of 1918, the final year of the war, the United Kingdom government voted a colossal amount of £200,000,000 for the prosecution of the war. Subsequently, in Malaya, the War Taxation Enactment, 1916 was tabled again in the council for re-enactment based on the presumption that it was the wish of the country to further contribute to the noble cause of the war in Europe. In principle, the re-enactment bill was similar to the preceding enactment but with some minor amendments to the application of the law, particularly to the rates of tax on tobacco. The Chief Secretary proposed that the rates of tax on imported tobacco be streamlined with the scale in force in the Colony which was passed in November 1918. At this juncture, some of the council members did not favour the re-enactment of the bill due to the significant surplus balances which was estimated at \$102,000,000. The Chief Secretary, being adamant on the huge surplus balances, instead argued that most of the taxes, proposed under the original bill, had been suggested by a representative Committee that met in the Council Chamber, and none was suggested by members of the government. Without further delay, the bill was passed as Enactment No. 39 of 1918.²⁴⁷

By the end of 1918, owing to abnormal prevailing conditions, the cost of raw material had been significantly increased. Until that time, duty leviable on tobacco varied in certain cases with the value per pound of the article, the value being taken at the invoice value. However, as the price of the article increased substantially, the importers tended to declare purely nominal value so as to enable their goods to come

²⁴⁶ *ANM/KL SS 17* : LCP, 14th October, 1918, p. B128, "Supply Bill for 1919".

²⁴⁷ *ANM/KL P/P3* : PFC, 5th December, 1918, "The War taxation Enactment, 1916, Amendment Enactment, 19.", pp. B102-B103.

under a lower scale of duty, resulting in a substantial understatement of the value of the article being declared. In order to curb this massive tax evasion, under the proposed new method of regulating the duties which had already been adopted in the United Kingdom, Canada, Australia, the West Indies, Ceylon and the FMS, followed by the SS, the duty was based on the weight of the article, rather than its value as declared in the invoice. In other word, the whole point of the resolution was to substitute a specific duty for an *ad valorem* duty. The government suggested a duty of \$20 per pikul. C.W. Darbishire and Dr. Lim Boon Keng, unofficial council members, contended that not only had this bill been brought in surreptitiously, and hurriedly passed, it was put forward by certain major importers with vested interests, notably the British American Tobacco Company and the Canton Nanyang Brothers Tobacco Company. They argued that on the basis of equity and fairness, it was ideal to tax higher on expensive and branded tobacco whilst imposing lower tax for tobacco smoked by the poor classes.²⁴⁸

²⁴⁸ Actually, the new system was to consolidate with the system already adopted in the FMS. It was resolved that the duties imposed on imported tobacco by sub-section (I) of section 4 of the Tobacco Duties Ordinance, 1916, and by section 4 of the Tobacco Duties (Amended) Ordinance, 1917 be varied with effect from 14th October, 1918. See *ANM/KL SS 17* : LCP, 14th October, 1918, pp. B120-B122.

Recovery Period-- Post War Tax Policy (1919-1929)

The War Taxation Enactment was able to generate a considerable sum in war taxes of which all the proceeds were forwarded to the Imperial government. Probably due to the prevailing economic depression in which the government said it was very difficult to prophesy tin and rubber prices in 1920, by November 1919, the council decided to abolish the war tax. Despite prevailing economic indicators pointing toward a bleak future, the government still portrayed their undivided submission to the Imperial government by expressing its intention at a later date to propose a contribution at least equal to the amount contributed by war taxes.²⁴⁹

In the following year, due the continuing unflourishing condition of the tin industry, some the influential figures in the tin industry expressed their uneasiness toward the government's policy of not reviewing the tax rates commensurate with the condition of the industry. F. Douglas Osborne, unofficial council member, acting as proxy to the industry, supported by mining operator Towkay Leong Fee, tabled a motion that the rates of export duty payable upon tin be reduced so that in future the rate payable would not exceed 10% *ad valorem*, and that in the case of tin won by the mining of

²⁴⁹ *ANM/KL P/P3* : PFC, 30th November, 1920, "The Supply Enactment, 1920", pp. B74-B75, B84-B85; 30th November, 1920, "Memorandum of Information and Statistics to accompany the High Commissioner's presidential address to the Federal Council", pp. C91-C92; *ANM/KL P/P3* : PFC, 21st November, 1922, p. C298. The estimates for 1920 from chief sources of revenue of the FMS were as follows:

Type of Revenue	Revenue Collected (\$) in 1919
Railways	20500000
Sale of Chandu	14000000
Export duty on tin and tin-ore	12800000
Export duty on rubber	4000000
Land revenue and land sales	3672000
Spirits and tobacco	2800000
Total of Revenue Collected from major items	57772000

It worth noting that in late 1920, the FMS War Savings Certificate was also temporarily suspended. Sales up to the date of suspension totaled \$301,935 or 20, 129 in number. However, it was then permanently suspended in April, 1922.

lodes or veins in rocks the rate of duty would not exceed 5% *ad valorem*. Sadly, the motion lost to a vote of 10 to 4.²⁵⁰

By late 1921, the future financial position of the FMS was still bleak due to stiff competition mostly from the American markets on which the produce of the FMS was sold at below the cost of production. Revenue generated from rubber and tin dropped significantly. By the end of 1922, the prices of tin and rubber continued to fall. It was anticipated that the revenue in that department would fall short by \$5 million due almost entirely to the low price of tin and rubber.²⁵¹ In an attempt to protect the Malayan produce, after the Secretary of State for the Colonies by telegram authorised legislation by Malaya and Ceylon for restriction on uniform lines of the export of rubber, and the government had no choice but to impose rubber restriction legislation on export of rubber except if the exporter willing to pay an exorbitant duty. In February 1922, in a dire need to balance its budget, the government appointed a Retrenchment Commission of which the terms of reference were to make a full enquiry into the establishments and organisations of various departments of government, the expenditure of various government departments and the supervision and control of the same, and the

²⁵⁰By this time, the government and the public realised that their social services were seriously inadequate and that revenue must be spent lavishly to bring them up to date. "The war has bequeathed us a heavy legacy of things that ought to be done and cannot be done cheaply". PFC of the FMS, 1920, pp. B63-B65, cited in Lennox A. Mills; *British Rule in Eastern Asia*, p. 94. ANM/KL P/P3: PFC, 2nd May, 1910, "Reduction of Tin Duty", pp. A23, B45-B54. In 1904, a notification under the Custom Duty Enactment, No. 1291, stated, "Lode tin will pay duty at one-half the above rates, subject to a minimum of 5% *ad valorem*. See also Notification No. 633 of 1906.

²⁵¹ANM/KL P/P3 : PFC, 13th December, 1921, pp. B81-B82. Revenue generated in the FMS from three major items:

Commodity/Year	1918	1919	1920	1922 (Estimated)
Tin	13100000	9900000	12200000	7500000
Rubber	2200000	4800000	4400000	2250000
Chandu	14800000	14000000	13600000	9500000
Total revenue (3 major items)	\$30,100,000	\$28,700,000	\$30,200,000	\$19,250,000

allowances of all kinds and emoluments, other than salaries, drawn by government's employees.²⁵²

Meanwhile, in the SS, amid an increase of a surplus of \$4 million in that year, the liquor duties and tobacco duties were increased by 50%. Duties on liquors were three times as great as they were in 1913. It worth noting that in 1913, when the SS commenced accumulating \$49 millions surplus, there was no tax on tobacco, By 1923, the tax levied on tobacco was 80 cents to \$1.20 per lb. The tobacco and liquors' duties were increased by 50% in August 1921. Death duties were practically doubled in 1922. Despite representations by the general public to reduce rates of taxes, the government remained adamant and instead increased the taxes. At this juncture, probably obsessed with previously successful tax raising measures despite being flooded with representations and oppositions, the government even boldly contemplated a bill on the stocks to increase the stamp duties.²⁵³

By the end of 1923, the aftermath of the war had sparked further rampant inflation in Malaya and the SS. Trade was bad, and margins of profit had for the most part disappeared. In the SS, it was contended that at that point of time, light or heavy taxation might make all the difference between the continuance and closing down of individual firms, including vital and supporting industries. W. Lowther Kemp, unofficial council member, conveyed the representations of the general public.²⁵⁴

“So that it must be admitted that our scale of taxation for the past ten years has been 17% higher than was really necessary.this is the very time when reduction of taxation would be most beneficial and when it would be productive

²⁵² *ANM/KL P/P3* : PFC, 21st November, 1922, pp. B64-B69, B73-B74. On 10th October, 1922, C297-C298.

²⁵³ *ANM/KL SS 17* : LCP, 29th October, 1923, pp. B174-B175, "Supply Bill for 1924". W. Lowther Kemp statement's reflected the situation, "In the name of all that is sensible, why should they be increased?"

²⁵⁴ *ANM/KL SS 17* : LCP, 29th October, 1923, pp. B174-B177, "Supply Bill for 1924". Mr Thorne, unofficial member of the Legislative Council remarked, "The trade of the Colony has been, as we heard, extremely bad for the last two years; profits have been nil, and in future there are likely to be small".

of the most good. No better time than this could possibly appear for you to give grave consideration to a reduction of taxation generally. "There is something, to my mind, altogether wrong with the habit of mind of the government in this particular respect. "

By the end of 1923, the Opium Revenue Replacement Fund accounted for 48% of the SS's revenue, liquors 9.6%, interest 6.7%, tobacco 6.5%, stamp duties 4.2%, post office revenue 4.5%, land revenue 4.2%, and other items 16% respectively. Rates of postage had been raised from 3.4 and 8 cents to 5.6 and 12 cents for the different countries, and telegrams had been increased from 3 to 5 cents." At this point, it appears that the tax policy promulgated by the SS was to balance the budget without consideration to its effect to the general public, particularly the lower classes. Representations by W. Lowther Kemp, "What one would like to do is to reduce the taxation which falls most directly upon the poorer classes....I do not think we can make the question of relieving the taxation of the poor part of the policy and we have to come back to the general taxation of the public", went unheard by the government.²⁵⁵

Meanwhile, by late 1923, the work of the Retrenchment Commission of the FMS was still being debated in council.²⁵⁶ As the financial situation worsened, the matter was being publicly scrutinised. It was argued that the government was responsible for the huge deficit as a result of extravagant expenditure on ever increasing establishments and on costly works, especially on railways, which could not be described as urgently needed. At this juncture, it was suggested that extra taxation to make ends meet should not be resorted to which would effect injuriously every industry and be greatly resented. The government of the FMS, in response to the representations, argued that the fiscal system of the FMS had been greatly affected by the prices of tin and rubber whilst admitting the extent of the extravagant recurrent and capital expenditure. The matter was further exacerbated by the "above the market price" of rice which had been

²⁵⁵ ANM/KL SS 17 : LCP, 29th October, 1923, p. B176, "Supply Bill for 1924".

²⁵⁶ ANM/KL P/P3 : PFC, 14th November, 1923, Vol. I, pp. B139, B157. The Commission was instructed to come up with a \$10 million cut in expenditure.

purchased from India, and which had cost the government a Rice Bill of \$22 million of which the government admitted that the Indian's government slick manoeuvre to deceive the FMS government in the sale was unprofessional and beyond comprehension.²⁵⁷

Similar to the FMS, the SS financial health was not spared from the effect of the war. During the meeting after the *Bill for Imposing a War Tax on the Basis of Income* was tabled for reading the first time, the Attorney General tabled a *Tobacco Duties (Amendment) Bill* be read for the first time for the purpose of amending the *Tobacco Duties Ordinance, 1916* and after the third reading, it was passed. The main provision of this bill was to impose an additional duty of 50% on the present duty on imported tobacco with the objective of raising additional revenue and increasing the annual contribution to the Imperial government toward the prosecution of the war. At the same time, the duties on liquors were also increased which was supposedly to be standardised with the rates already imposed in the FMS.²⁵⁸

In the SS, no further major amendments with respect to applications of law except an increase in tax rates were instituted to the *Chandu Revenue Ordinance of 1909* until early January of 1920.²⁵⁹ Until the end of 1924, revenue from opium still commanded more than 50% of the total revenue of the Colony. As the Treasurer

²⁵⁷ ANM/KL P/P3 : PFC, 1924, Vol. I, pp. C94-C103, "Correspondence from the Association of British Malaya, London, to the Secretary of State for the Colonies, 27th June, 1923"; Enclosure "Memorandum by President of the Association of British Malaya, Sir Ernest Birch, to the Under Secretary of State for the Colonies"; pp. C105-C111, "Correspondence from L. N. Guillemard to the Secretary of State, 11th December, 1923; Enclosure No. 2 to FMS Despatch No. 681 of 11th December, 1923, pp. C117-C126. At this juncture, the Association suggested that all revenues collected in a State should be itemised in the Estimate of each State, not just as separate sums under each head of revenue.

²⁵⁸ ANM/KL SS 17 : LCP, 8th January, 1917, pp. B19-B21. The increased was on all tobaccos except the native tobaccos and the cheap European tobaccos.

²⁵⁹ ANM/KL SS 17 : LCP, 8th March, 1920, p. C26, "The Liquors Revenue Ordinance, 1909: Notification No. 165 in *Government Gazette* No. 15 of 30th January, 1920"; ANM/KL SS 17 : LCP, 12th, April 1920, p. C40, "The Liquors Revenue Ordinance, 1909: Notification No. 580 in *Government Gazette Extraordinary* No. 38 of 29th March, 1920"; ANM/KL SS 17 : LCP, 19th, January, 1920, p. B18; LCP, 8th, March, 1920, pp. B25-B26. See also ANM/KL SS 17 : LCP, 8th, March, 1920, p. C27 "Notification No. 219 in the *Government Gazette* No. 19 of the 6th February, 1920".

remarked in a Legislative Council meeting, “What have you in taxation if you remove opium?” which clearly denotes that without direct taxation, and solely depending on revenue from opium, the Colony was gripped by an unstable fiscal system.²⁶⁰ However, in a sequence of movements initiated by the League of Nations against the exportation and importation of opium and cocaine and various other drugs, the signatories of the Conventions of the League of Nations agreed that legislation should be passed in various countries and their dependencies for the suppression of the use of those drugs. In response to this resolution, the government aversely initiated the *Chandu Revenue (Amendment) Bill* supplementary to the *Deleterious Drugs Bill*, which in effect had caused the expenditure of the Monopolies Department to increase considerably.²⁶¹

No major reference was made to the Liquor Bill until the middle of 1925 except increasing the tax rates. Until this time, the tax policy promulgated by the government might be regarded as a “Damoclean sword hanging by a hair” over a large portion of the revenue still generated from opium. The report of the Opium Commission, with an inbuilt government majority, appointed by the Governor of the SS in 1924, which recommended total suppression of the use of opium, surprisingly concluded that the opium habit did little harm to the Chinese community. This position was contradictory to that of the world at large who believed that the use of opium for other than medicinal and scientific purposes was an abuse and not legitimate, and must be terminated, whilst the Chinese community as a whole in the SS and the FMS held the view that the opium habit tended to destroy their health and morals, and reduced their efficiency and value

²⁶⁰ *ANM/KL SS 17* : LCP, 23rd April, 1923, p. B191; 3rd November, 1924, p. B119.. Comparative revenue generated from opium since 1906 to 1924:

Financial Year	Total Revenue (\$)	Revenue from Opium (\$)
1906	9618313	5,100,000=53.0%
1913	12397747	6,125,000=49.4%
1924	28639161	Estimated at 51.5%

²⁶¹ *ANM/KL SS 17* : LCP, 6th October, 1924, pp. B93, B97-B98; 3rd November, 1924, p. B145.

in the economic sense.²⁶²

Like fishing in troubled waters, the government in a so-called “policy to curb the use of opium” raised the price of chandu significantly over the period in question which explained the revenue collected from opium contributing more than 50% of the total revenue. Given the ample lead in time of more than 12 years since the engagements of the International Opium Convention of 1912, which was signed at the Hague in January 1912, the government subtle moves to generate more tainted revenue from opium usage was camouflaged by the advent of the war before the Hague Convention was completely ratified and the problem was put in abeyance until the end of the war.²⁶³

After the end of war, subsequent resolutions passed at the Hague Convention, the engagement of the Peace Treaty of Versailles and the provisions of the International Opium Convention signed at Geneva on the 19th February, 1925 had eventually forced the government to advocate immediate consideration of the problem of opium usage and revenue generated from opium activities. Consequently, a committee, consisting solely of nominees of the full body of unofficial council members and at their request nominated by the Treasurer on behalf of the government, was appointed which unanimously recommended that the resolution be adopted immediately and a lump sum of \$30 million be put aside to form a special reserve fund, later called *Opium Revenue*

²⁶² *ANM/KL SS 17* : LCP, 29th June, 1925, pp. B65-B66. The duties imposed by Section 4(1) of Ordinance No. 118 (Liquors Revenue), as published in Notification No. 1772 in the *Government Gazette Extraordinary* dated 23rd October, 1922 and in Notification No. 1994 dated the 17th December, 1923, were repealed, and a new rates with effect from 29th June, 1925 were enforced. See also *ANM/KL SS 17* : LCP, 24th August, 1925, pp. B107-B108 where duties imposed by Section 4(1) of Ordinance No. 118 (liquors Revenue) as published in Notification No. 1201 in the *Government Gazette Extraordinary* dated the 30th June, 1925, were repealed on and from the 24th August, 1925, and imposed with new tax rates with effect from 24th August, 1925. See also *ANM/KL SS 17* : LCP, 6th October, 1924, p. B119-B120.

²⁶³ *ANM/KL SS 17* : LCP, 24th August, 1925, pp. B96-B99, 103. The relevant Article, which was Article VI, of that Convention reads as follows, “The contracting powers shall take measures for the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium, with due regard to the varying circumstances of each country concerned, unless regulation on the subject are already in existence”. The Peace Treaty of Versailles called upon all the high contracting parties to make effective the Hague Convention whether they had by then ratified it or not.

Replacement Reserve Fund, to be held against the rainy day when opium revenue in the Colony dwindled appreciably. This was the result of a policy strongly advocated by the Colonial Treasurer in 1925 who recognised that the revenue of the Colony was inelastic. This recommendation was objected to by D.J. Ward, Resident Councillor of Penang who advocated that it was more rational to set off the budget surpluses to reduce loans or taxation and not to store it away invested in gilt-edged securities. He further argued that the Imperial Government should only be entitled to only 20% of the total revenue for Military Contribution excluding opium revenue because it was unthinkable that the military was supported by tainted money.²⁶⁴

At this juncture, with regard to the possible bleak financial future of the Colony, the council was advised that the Colony had been built up almost entirely on the principles of free trade, and for this reason, the government should hesitate to impose fresh import or export duties.²⁶⁵ It was interesting to note that the Colony had no natural resources as compared with the Malay States which had huge areas of undeveloped agricultural and mining lands from which they could draw their future revenue when the opium revenue diminished. The government had no choice but to “milk the existing cow a little more frequently.”²⁶⁶

²⁶⁴ *ANM/KL SS 17* : LCP, 13th December, 1926, pp. B189, B193; 24th August, 1925, pp. B99; LCP, 26th September, 1932, pp. B104-B105, B117, B 131-B134. The \$30 million was made as a nucleus of that fund and in principle, the annual contribution to the fund was 10% of the revenue of the Colony. Should the revenue falls appreciably below the “agreed nominal figure”, the fund would be drawn to compensate for the loss of revenue. See also 5th October, 1925, pp. C154-C155, “Address of the Officer Administering the Government to members of the Legislative Council”.

²⁶⁵ *ANM/KL SS 17* : LCP, 10th October, 1927, pp. C250-C251, “Address by His Excellency the Governor to members of the Legislative Council”. Even though the Colony’s financial position could be described as singularly inelastic character revenue, its free port status had deprived her from import duties other than spirits, wines, tobacco and petroleum. On the other hand, the FMS had income largely derived from export duties on tin and rubber.

²⁶⁶ *ANM/KL SS 17* : LCP, 24th August, 1925, pp. B106, B109. On petroleum tax, petroleum used for domestic lightning purposes continued to pay 5 cents per gallon whilst petroleum used in luxurious motors was tax 10 cents per gallon. As to liquor duty, there was an arbitrary 10% increased, whilst the tariff on locally manufactured tobacco (Item (C) of the Ordinance) which had increased significantly was doubled from \$20 to \$40 per pikul.

The creation of the *Opium Revenue Replacement Reserve Fund*, in effect, had stirred commotions in the council on the arbitrary budget deficit in 1917 to 1929. The Committee on the fund recommended that the sum standing to the credit of the fund be transferred to the general revenue account; that \$40 millions of the Colony's surplus be treated as reserved surplus, and that the whole question be reviewed by a new Committee after the next Opium Conference in 1929. However, the government took the view that nothing of any present value could be gained by adopting the first two recommendations, as the available liquid assets of the Colony were more than sufficient for the needs of the Colony for several years to come.²⁶⁷

By March 1927, the tax rates on tobacco were increased again which the government contended was not meant to increase revenue but to secure against loss of revenue through development of the local cigarette making industry. By this time, the tobacco industry had flourished to the extent that it was possible to export cigarettes. To encourage this industry, the government moved to amend the ordinance that allowed a "customs drawback"²⁶⁸ of import duty imposed on tobacco imported into the Colony for the purpose of manufacturing cigarettes meant for export. In October, 1929, the power of the Governor to allow exemption was extended to imported tobacco to be manufactured into cigars for export.²⁶⁹

In early 1929, the Stamp Ordinance was subject to tax hikes whose purpose the government again contended was not in any way to increase revenue. The Ordinance No. 103 (Stamps) was partially repealed and re-enacted with adaptation from the English

²⁶⁷ *ANM/KL SS 17* : LCP, 29th October, 1928, p. B153, "Supply Bill for 1929". Finally the government adopted the final recommendation of the Committee.

²⁶⁸ The term *customs drawback* is a refund of customs duty collected on imports, paid when they are re-exported. John Black, *Oxford Dictionary of Economics*, (Oxford University Press, Oxford, 1997) p. 107.

²⁶⁹ *ANM/KL SS 17* : LCP, 21st March, 1927, pp. B34-B35; 2nd July, 1928, p. B67; 8th October, 1928, p. B107; 28th October, 1929, pp. B140-B141. See duties imposed by Section 4(1) of Ordinance No. 158 (Tobacco Duties) as amended by Section 5(a) of Ordinance No. 33 of 1926, and the Tobacco Duties (Amendment) Ordinance, 1926, were repealed.

Finance Act of 1898 and 1927, the Ceylon Stamps Ordinance, and the English Revenue Act of 1906. However, close scrutiny of the amendments showed that the scope of the ordinance was extended to cover almost every mode of transactions.²⁷⁰

Tax Policy: (1930-1939)

Worldwide Trade Depression Era (1929-1933)

In 1929 the American slump was the culprit for worldwide depression. As a result the Great Depression had compelled the government to institute sweeping economies and additional taxes. In 1931, the economic depression had reduced the Colony's revenue to its lowest level since 1918, and in the same year the Colony had its second highest expenditure in its history. This conjunction produced a deficit of \$20,201,030 and to meet this requirement, the revenue surplus was reduced to \$56,171,577. The expenditure exceeded that of 1930 by over \$7.5 million. The government adopted this policy deliberately to relieve the widespread unemployment, and also because it could carry out necessary works more cheaply owing to the fall in costs of construction. An insistent demand arose from every section of the public for lower taxes and drastic economies. A Retrenchment Committee was appointed to investigate which reported unanimously that certain departments especially had "expanded out of all relation to the population and to the public revenues". The committee demanded reductions of personnel and salaries, no further recruitment until the revenue recovered, and no construction of new public works for two years.²⁷¹

²⁷⁰ ANM/KL SS 17 : LCP, 25th March, 1929, pp. B34-B36; 13th May, 1929, pp. B61-B62; 2nd September, 1929, p. B98. Under present law, when Companies were amalgamated or reconstructed, the necessary instruments of transfer attract a heavy *ad valorem* duty, under the heading "conveyance on sale", although there was no substantial change of ownership of the property comprised in the transfer. The object of this bill was to give similar relief as provided by the English Finance Act of 1927. Other important changes included voluntary conveyances, foreclosure in respect of mortgage property, securities transfer, exemption of duty on instruments related to sale, transfer, or other disposition of ship or vessel, and policy of insurance. Amendments were also made to certain Stamp rates.

²⁷¹ LCP of SS, 1932, pp. C346-C347, C421-472, cited in Lennox A. Mills; *British Rule in Eastern Asia*, p. 84.

With the advent of worldwide trade depression²⁷² gripping the Colony and the FMS economies since 1930, the government of the SS in late 1931, upon recommendation by the Taxation Committee which reported in 1928 on possible future sources of taxation in the Colony, decided to extend the tax base using the machinery of the *Stamps Ordinance, 1929* as a new source of revenue. The target this time was gambling. The object of this bill, which had been enacted in the FMS, was to impose a duty on bets made on the totalisator at race meetings and also on sweepstakes promoted by racing clubs or associations of which both activities were classified as a luxury. Surprisingly, at this meeting, nobody objected to the proposal and unanimously it was agreed and the bill was read the first time. Meanwhile in the FMS, the plan to federalise the collection of stamp duty was discussed due to the difficulty of administering different stamp procedures in the four States. Even though the first committee to consider this plan was appointed in 1909, it did not materialise until 1930. A similar committee was also appointed in the Colony but the draft bill met with an untimely death. Apparently, a new bill was enacted in 1929 in the Colony and 1930 in the FMS. After a series of debates, the bill was passed as Enactment No. 6 of 1930.²⁷³

P. Simpson, unofficial council member, added that if people had enough money to squander it on gambling during a recession they could very well pay a proportion of it to the government by way of taxation. He suggested a duty of 5%, whilst others

²⁷²Encyclopedia of Knowledge (Treasure Press, London, Revised ed. 1988), p. 159. LCP of SS, 1930, pp. B119-B121, *op. cit.*, 1932, pp. B102, cited in Lennox A. Mills; *British Rule in Eastern Asia*, p. 84; *ANM/KL SS 17*: LCP, 28th September, 1931, Vol. I, p. B115. Even though the recession was in its second year, the financial position was still in surplus. The existence of the budget deficit in 1930 and 1931 was as a result of money from the general revenue account being credited to the Opium Revenue Reserve Replacement Fund and Currency Guarantee Fund.

²⁷³*ANM/KL SS 17*: LCP, 28th September, 1931, Vol. I, pp. B126-B127. From 1928 to 1930, the amount of money invested on the totalisator and sweepstakes at race meetings in the Colony amounted to nearly \$8 millions per annum. A duty of 2% on such transactions, as provided in this bill, which was easy to collect through the Turf Clubs, would generate a revenue of \$160,000 per annum. The duty was a very small percentage and incidentally, it was much less than the amount recommended by the Taxation Committee. See also *ANM/KL P/P3*: PFC, 13th March, 1930, Vol. I, pp. B15-B20, "The Stamp Bill, 1930". *ANM/KL SS 17*: LCP, 12th October, 1931, Vol. I, p. B141.

suggested 10% be imposed and the scope of taxation be extended to other clubs and associations besides Turf Clubs. The 1928 Taxation Committee suggested 5% as the figure for the tax on bets on the totalisator, whilst for sweepstakes, they suggested 10%, the idea being that if a person won a bet on the totalisator, then he exhibited in some way some skill in doing so. The Treasurer reiterated that the rationale to impose 2% duty was to set a standard legislation with the FMS. In addition, the Inspector-General of Police took the view that massive tax evasion would occur if the scope of taxation be extended to other sweepstakes. After a series of debates, the duty was decided at 5%.²⁷⁴

By October 1930, the FMS government did not expect that the worldwide depression would leave Malaya untouched. In reality, Malaya was suffering from it severely. The rubber and tin slump continued.²⁷⁵ The slump had resulted in repatriation of Indian and Chinese labourers from Malaya. In addition, the government hesitated to curtail expenditure on public works as this would only aggravate the depression due to bad trade and would force out of the country skilled labour which was badly needed when the economy recovered. By the end of 1930, the Planters' Association of Malaya protested against the increased rates of *ad valorem* export duties on rubber, payable from 2nd January, 1930, which was increased without consultation first with the industry. The industry believed that there was no justification for the government to increase the scale of export duty so high. In addition, associated to the export duty, a *Rubber Export Duty Hypothetical Fund* which was the fund over-collected from the rubber industry, was created. The industry urged the government to release the monies to set-off against the increased duties. Amid all these representations against the increase in taxes, following

²⁷⁴ *ANM/KL SS 17* : LCP, 12th October, 1931, Vol. I, pp. B142-B143; 14th October, 1931, Vol. I, p. B168; 8th August, 1932, pp. B90-B92; 26th September, 1932, pp. B113-B114; 25th October, 1933, p. B168. By October, 1935, it was reported that the betting tax was still not extended to all clubs. It was reported that illegal sweepstakes and betting with bookmakers had increased considerably throughout the country. As a result, the revenue of the two clubs, which were subject to betting tax considerably decreased which indirectly affected the government's revenue. The Police Department, on the other hand, still insisted that it was a difficult tax to collect if extended to other clubs. See *ANM/KL SS 17*: LCP, 28th October, 1935, pp. B76-B77.

²⁷⁵ *ANMKL P/P3* : PFC, 6th and 8th October, 1930, Vol. I, pp. B62-B63. "His Excellency the High Commissioner's address at a Budget meeting".

the measure already adopted by the SS, the government remained adamant and instead tabled the Stamp (Amendment No. 2) Bill, 1931 via the certificate of urgency.²⁷⁶

During the budget meeting in October 1930, the government, using the argument that Malaya in previous years had been very lightly taxed, disclosed its intention to impose new taxation to balance its budget through Supplement to the *Government Gazette* of the 1st October, 1930, Notification No. 7241 which contained certain new duties imposed under the Customs Enactment.²⁷⁷ The proposal was coldly received with a series of criticism from most of the unofficial council members who believed that the revenues sufficed to sustain proper administration of the government machinery but not enough to pay for these extravagant capital works. As such, they argued it was wrong for the government to raise taxation for the purpose of embarking upon capital expenditure. The government in a dire need to balance its budget, however, rejected all representations made to revoke in *toto* the Customs Taxes imposed and in response the government convincingly argued for:²⁷⁸

“...some alteration in the incidence of our existing taxation; for if the position is fully and fairly regarded it will be seen that the new taxes represent a shifting of the incidence and not only any increase in the total taxation raised. Indeed, the loss of \$14 million of revenue from exports is very inadequately replaced by some \$4.5 millions on imports....”.

The government, in admitting the main objective of the proposal was to finance capital expenditure, argued that:

“...these taxes are to help us to pay for have been deliberately retained in the Estimates for the express purpose of carrying out the policy of government to

²⁷⁶ANMKL P/P3 : PFC, 13th March, 1930, Vol. I, pp. B26-B29; 19th January, 1931, Vol. I, pp. B120-B122, “The Stamp (Amendment No. 2) Bill, 1931, 1931”. Initially, the Stamp (Amendment) Enactment, 1931 in the FMS imposed a duty of 2% on bets and sweepstakes but had not been brought into force pending similar action in the Colony. Surprisingly, the SS passed a 5% duty instead 2% as a result from the suggestion of the unofficial member of the Legislative Council. In order to standardise the duty in the FMS and the SS, it was also suggested a 5% duty be imposed in the FMS.

²⁷⁷ANMKL P/P3 : PFC, 6th and 8th October, 1930, Vol. I, pp. B64-B66.

²⁷⁸ANMKL P/P3 : PFC, 6th and 8th October, 1930, Vol. I, pp. B64-B66, B92-B95, “Resolution *Re* New Taxation”.

mitigate by every reasonable means the problem of unemployment and to prevent skilled labour leaving the country....”.

“...it is possible to postpone such works on the ground of financial stringency, but when the particular conditions of the country make it very necessary in the public interest that expenditure should not be curtailed.....”.

The government contended that the effect of the proposal was light and distributed over a large section of the community; it was deemed a very productive taxation. After a series of deliberations, the government finally decided to totally withdraw the proposed taxation but only on liquid fuel and on lubricating oil.²⁷⁹

By late 1930, the Chandu Revenue (Amendment) Bill was again amended to bring the law regarding control of opium into consonance with the existing practice of the Monopolies Department, which practice followed the terms of the Geneva Convention to which the SS government had adhered.²⁸⁰ As a result of these amendments and other contributing factors, such as change in the method of selling opium, slump economic conditions, shorter business hours, and more extensive activities in smuggling of opium into the Colony which had led to an abrupt decrease in the purchase of government chandu by the consuming public, a Revised Estimate of 1930 showed that the opium revenue had dropped from \$12 millions to \$9 millions per annum.²⁸¹

²⁷⁹ANM/KL P/P3 : PFC, 6th and 8th October, 1930, Vol. I, pp. B93-B95. The “Resolution amending Notification No. 7241 published in the Supplement to the *Government Gazette* of 1st October, 1930, under the Customs Enactment, 1923” was passed by omitting the words “liquid fuel and lubricating oil 5 cents per gallon”. Additional of 10 cents on petrol was estimated to yield \$1,790,000. The addition to tobacco was estimated to yield \$1,938,000. These increases were taxes on luxury items of which, in spite of the slump, the consumption had steadily increased indicating one source of joy and consolation to the upper class. In addition, the government pointed out that the tax of one cent a pound on sugar was surely a light one which was estimated to yield \$713,000.

²⁸⁰ANM/KL SS 17 : LCP, 29th September, 1930, pp. B124-B125, B138. The standard practice was that opium was only sold in warehouses owned by the government and chandu was only stored by agents of the Superintendent. This bill seeks to give legal sanction to these practices by eliminating all references to licensed warehouses and licensed shops and saloons for the sale of chandu. In addition, a new section of the bill provided that it was illegal to sell chandu to minors.

²⁸¹ANM/KL SS 17 : LCP, 29th September, 1930, pp. B141-B142, B146-B147; LCP, 12th October, 1931, Vol. I, pp. B160-B163. In late 1931, the government confirmed that smuggling activities were not the contributory factor in the reduction of opium revenue, rather it was the new system of packaging of

Despite all attempts to stop completely the opium usage, the government's lingering affection to draw 4% interest on the *Opium Revenue Replacement Reserve Fund* for the next 14 years implied that the government was not ready to depart from its main source of revenue. It denotes that steady generation of revenues were paramount in the government's fiscal policy. By 30th June of 1930, accumulated amount in the fund stood as \$45,516,019. However, by the end of 1933, the Governor of the SS agreed with the subject of speeches by unofficial members that the retention of the Opium Revenue Replacement Reserve Fund was unnecessary and should revert to the general assets of the Colony. Meanwhile, at about the same time in January 1931, the FMS's government, following the path of the SS, took steps to adhere to the resolutions passed under the Opium Conventions of 1912 and 1925 with the introduction of a smokers register and the abolishment of licensed chandu shops. At this juncture, despite a grave shortage of revenue owing to the present low prices of tin and rubber, the FMS government did not contemplate setting aside part of its revenue to increase the Opium Replacement Fund.²⁸²

The prolonged depression had lowered the price of tin to levels at which very few mines could operate without a massive loss. The large accumulation of stocks and the excessive departure from a reasonable balance between production and consumption were obvious. Even though the measure would significantly affect the revenues generated from export duties, the government had no choice but to establish equilibrium between supply and demand; vide the introduction of the *Tin and Tin-Ore (Restriction)*

chandu where consumers could not afford to pay for \$13 for the 1½ oz. of the commodity, and the immense popularity of the smallest unit of sale. See also *ANM/KL SS 17* : LCP, 26th September, 1932, pp. B118-B119, B123. At this juncture, the confirmation of the decrease in opium revenue was warmly welcomed by some of the unofficial members because it meant that the people were giving up the habit of opium smoking. At the same time, there was also a decrease in liquor revenue which was contributed to the higher price, lower purchasing power and the decrease in the number of consumers.

²⁸² *ANM/KL SS 17* : LCP, 1931, Vol. II, pp. C287-C288, "Review of the Affairs of the Colony of the SS prepared in the Colonial Secretary's Office for the information of Members of the Legislative Council held on the 29th, September, 1930"; 2nd October, 1933, pp. B121-B122. See also *ANMKL P/P3* : PFC, 19th January, 1931, Vol. I, pp. B15, B53, "The Opium and Chandu Bill, 1931". In the FMS, after resolving into committee, the bill was passed as Enactment No. 5 of 1931.

Bill, 1931 and the Rubber Restriction Enactment which had been in force earlier.²⁸³

While rejecting the idea that the deficit was not due to any heavy and unforeseen expenditure on the part of the government, the FMS government cautioned the council that the country was facing not only financial difficulty but also an economic depression. In order to counter the situation, the following measures were adopted by the government.²⁸⁴

1. All Temporary Allowances on salaries were reduced by 50%,
2. The Secretary of State for the Colonies had been asked to allow the interest on the Opium Revenue Replacement Fund, which stood at \$24, 600,000 at that time and exceeded three years' revenue from chandu sales, be credited to the general revenue.
3. The appointment of a Taxation Committee to explore the possibility of increasing that taxation which the government had promised to inflict on the general public with a minimum tax burden, and to expand the tax base with new tax instruments.
4. Reducing the scope of public and private expenditure bringing it into harmony with the realities of the existing economic condition.

²⁸³ *ANMKL P/P3* : PFC, 19th January, 1931, Vol. I, pp. B46-B53. The bill was passed as Enactment No. 23 of 1931.

²⁸⁴ *ANMKL P/P3* : PFC, 19th January, 1931, Vol. I, pp. B58-B61. The following statistics show the serious deterioration of the economic position of the FMS which reflect the impairment of purchasing power and the taxable capacity of the FMS:

Year	Export Returns (\$ millions)	Import Returns (\$ millions)	Trade Effect
1929	338	201	Favourable trade balance of \$137 million
1930	202	168	Surplus fallen to \$34 millions
1931	estimated at 171	Data not available	Data not available

See also *ANMKL P/P3* : PFC, 19th January, 1931, Vol. I, pp. B96-B99, "The High Commissioner's address to the Federal Council". In addition to the interest to be credited to the general revenue sanctioned by the Imperial government, it was also suggested by some unofficial members to raid the Opium Revenue Replacement Fund to balance the budget. However the suggestion was rejected by the government. See *ANMKL P/P3* : PFC, 19th January, 1931, Vol. I, p. B107, "Supply Bill, 1931".

A couple of months later in January 1931, the Select Committee of the FMS in the course of deliberation, despite proposing a very considerable reduction in expenditure, had failed to recommend any reduction in the new taxation agreed to in the council vide the resolution passed on 8th October, 1930. Under the pretext that it was a fundamental condition of the financial policy accepted by the council that the budget should balance, the committee concluded that the equilibrium had been seriously upset by three factors: i) The Railways Department reported that the estimate of railway revenue for 1931 must be reduced by \$2,560,000, viz., from \$21,560,000 to \$19,000,000. ii) The cut of some \$950,000 on temporary allowances which was the feature of the expenditure estimates had become a matter of uncertainty pending a final decision on the findings of the Joint SS and FMS Commission. iii) The revenue returns indicated that the estimated yield from tin and rubber export duties for 1931 might not be realised.²⁸⁵

During the tabling of the Supply Bill, 1931, the proposal to impose new taxation was being debated. In a dire need to balance its budget, the government reiterated that the imposition of these taxes was dictated by the necessity of generating more revenue and any protective characteristics that any of them possessed were entirely secondary considerations. In a series of criticisms and representations, the government admitted that the ultimate incidence or full effect of the new taxes had not been precisely enough gauged due to the urgency of the matter. For instance, the Acting chief Secretary argued that the decision to tax cosmetics and perfumery, silk goods, musical instruments and gramophone records, etc., were based on the assumption that items were obviously luxuries. In the case of silk goods, the Commissioner of Trade and Customs confirmed that the department was unable to cope with the distinction between silk good and cotton. As a result it was decided to impose a 10% duty on both materials. In the case of musical instruments, records and accessories, on the basis not to "kill the goose", upon representations by industry, the government decided to reduce the rate from the

²⁸⁵ *ANMKL P/P3* : PFC, 19th January, 1931, Vol. I, pp. C120-C121, "Report of the select committee appointed to consider the possibility of making such reductions of expenditure in the Supply Bill for 1931 as will enable government to dispense wholly or in part with the taxation imposed in October, 1930".

proposed 25% to 10% *ad valorem*. Finally the Supply Bill was passed as Enactment No. 40 of 1931. Under this premise, the propriety of taxing them under present conditions could hardly be questioned. For the case of “kachang oil”, for which the groundnuts used to manufacture the oil, were imported from China, the government believed that if the people could afford to please their palate, they had to contribute to the revenue. In addition, this policy would stimulate local coconut industry and also stimulate local supply of foodstuffs by growing groundnuts in Malaya. Even though the duty on cement and tiles would affect the building industry as contemplated by the general public, the government felt that it was important to include it in the tax base solely as a revenue-raising measure. In addition, the government hoped that this measure would stimulate local manufacturing of the items. As in the case of taxing cycles and their accessories which had been represented as a hard hit at the poor man, the government reiterated that the tax was by no means a general impost on the poor because statistics showed that no more than 30,000 bicycles were in circulation in the FMS.²⁸⁶

By 1933, the effect of the slump had been so severe with significant diminution

²⁸⁶ *ANMKL P/P3* : PFC, 19th January, 1931, Vol. I, pp. B108-B115, “Supply Bill, 1931”; *ANMKL P/P3* : PFC, 18th November, 1931, Vol. I, pp. B122-B121, “Report of the Select Committee appointed to consider the possibility of making such reductions of expenditure in the Supply Bill for 1931 as will enable government to dispense wholly or in part with the taxation imposed in October, 1930”. *ANMKL P/P3* : PFC, 19th January, 1931, Vol. I, pp. B108-B115, “Supply Bill, 1931”.

New Tax items	Estimated Import Duty (\$)
Kachang Oil	600000
Cement	320000
Tiles	96000
Cosmetics and perfumery	40000
Cycles, cycle tyres and cycle accessories	50000
Cloth, linen, etc	720000
Silk goods	80000
Musical instruments, etc	50000
Total estimated additional revenue generated	1956000

In the following meeting, the motion was referred to the Select Committee for consideration.

of revenue to the FMS. The government at this point contemplated of reducing the gap between income and expenditure. At this juncture the Retrenchment Committee had allocated \$2 millions for the annual expenditure with a cut of \$1 million on education expenditure. Despite public representations and opposition from the Malay Council members in particular, the government even contemplated of imposing a tax of 15 cents per pikul on rice.²⁸⁷

By May 1933, opium revenue in the SS was further diminished by a new measure to suppress the sale of chandu to the public. Under the new amendment, the maximum legal amount to be purchased was reduced subject to the discretion of the Superintendent. During the same month, another measure, which further affected the collection of opium revenue, adhering to the Resolutions of the League of Nations Conference, held in Bangkok, was adopted in which the bill restricted the use of opium to persons who were under 21 years. In addition, it had been decided to close the registers for smokers of government chandu on 31st December, 1934. This first steps were thus being taken toward the rationing of registered opium smokers, and it was the beginning of the end of legalised opium smoking in Malaya.²⁸⁸ Surprisingly, by the end of 1935, statistics show that, despite the government procedures to suppress the use of opium, the consumption of opium increased.²⁸⁹

²⁸⁷CO 576/47, "Annual Report on the Social Economic Programme of the FMS, 1933", pp. B104-B105, B110-B115, B149.

²⁸⁸ANM/KL SS 17: LCP, 1st May, 1933, pp.B80, B94; 4th December, 1933, p. B202, "Address of the Governor of the SS on 2nd October, 1932 referring to the amendment of rules regarding registration of chandu smokers which were passed on 31st July, 1933"; 28th October, 1935, pp. B70, C415-C417, vide Notification No. 2759 and 2760 in *Gazette* No. 88 of 25th October, 1935; 2nd October, 1933, pp. B122, B159; 28th October, 1935, pp. B70-B71, B75. See also ANM/KL SS 17: LCP, 18th February, 1935, pp. B8-B9, B24-B25 for further amendments on Ordinance No. 117 (Chandu Revenue); 31st July, 1933, vide Notification No. 1330 in *Gazette* No. 45 of 7th July, 1933.

²⁸⁹ANM/KL SS 17: LCP, 28th October, 1935, p. B78.

Year	Annual Sales of Opium (\$)
1932	43106
1933	45386

Preferential Duties--Shift in Policy

During the slump, the government of the SS as a result of a policy dictated by the Imperial government, abandoned to some extent the principles of free trade on which it was founded and built up. By April 1932, following the telegrams from the Secretary of State announcing the intention of the Imperial government to inaugurate a policy of granting preference to the products of British Colonies and Dependencies, resolutions dealing with the duties on liquor and tobacco were tabled in the Legislative Council. The preferential duties proposed were identical with those recently introduced in the FMS²⁹⁰ where rates of duty for liquors and tobacco manufactured in the British Empire would be differentiated from those applicable to foreign countries. The Acting Superintendent of Government Monopolies claimed that these resolutions were not a revenue measure. However, close analysis shows that the measure was in fact "killing two birds with one stone"; firstly, the tax base was extended to cover wide areas of liquors and tobacco; secondly, most of the duties were increased to conform with the preferential duties imposed in the FMS and the United Kingdom.²⁹¹

1934	54232
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Increases in sales denotes that the number of smokers had increased and the anticipated diminution of opium revenue was still a long way to go.

²⁹⁰ANM/KL SS 17 : LCP, 4th April, 1932, pp. B32-B35. Duties under Section 3(1) of the Liquors Revenue Ordinance, 1927, as published in Notification No. 1929 in the *Government Gazette Extraordinary* of the 28th September, 1931, were repealed and new rates were imposed with effect from 4th April, 1932. Similarly, duties under Section 4(1) of Ordinance No. 158 (Tobacco Duties), as published in Notification No. 1930 in the *Government Gazette Extraordinary* of the 28th September, 1931, were repealed and new rates were imposed with effect from 4th April, 1932. The new date 4th April, 1931 for both bills was then amended to 30th May, 1932. See ANM/KL SS 17 : LCP, 30th May, 1932, pp. B55-B58.

²⁹¹ANM/KL SS 17 : LCP, 30th May, 1932, pp. B58-B59; LCP, 26th September, 1932, pp. B100-B102, "Address by His Excellency the Governor of the SS at a meeting in the Legislative Council". For extended list of dutiable items and rate of duties, see ANM/KL SS 17 : LCP, 19th October, 1932, pp. B130-B133; 1st May, 1933, p. B59, for amendments to the Schedule of Duties imposed under Section 3(1) of the Liquors Revenue Ordinance, 1927, as published in Notification No. 2011 in the *Gazette Extraordinary* No. 76 of the 19th October, 1932, which came into force with effect from the 1st May, 1933. The Schedule of Duties was again amended with effect from 1st April, 1934. See ANM/KL SS 17 : LCP, 12th February, 1934, Vol. I, p. B5. The Schedule of Duties was again amended with effect from 3rd December, 1934. See ANM/KL SS 17 : LCP, 3rd December, 1934, pp B168-B169. See also ANM/KL P/P3 : PFC, 30th November, 1920, "Circular Downing Street to the SS, dated 28th November, 1919 and Despatch Downing Street to the SS dated 26th September, 1919 forwarding copy of Finance Act, 1919 of the United Kingdom", p. C61; ANM/KL SS 17 : LCP, 24th September, 1934, p. B126. For

Sarcastically, however, J. Bagnall, unofficial council member, referring to the use of the *Public Revenue Protection Bill* responded, “....three days notice of a drastic change in the hundred years old fiscal policy of this Colony is totally insufficient”. In connection with the introduction of the preferential duties, the government introduced the Public Revenue Protection Bill which was received with much opposition from the general public, on the ground that it was widely held that the bill was the forerunner of new or increased duties, and extended list of dutiable articles,²⁹² the need for which had not been established. It was also argued that the SS should not follow the FMS footsteps which found additional taxation desirable. Bowing to public pressure, the Governor agreed to defer the resolutions to the next meeting. Paradoxically, during the second session of the meeting, despite further opposition expressed by some of the council members that retrenchment of expenditure, and not increased taxation, should be the means of balancing the budget, the resolutions were read the third time and passed.²⁹³

Still going through trade depression since 1930, in late 1931, duties levied under Section 6 of Ordinance No. 115 (Petroleum Revenue) as published in the *Government Gazette Extraordinary* of the 25th August, 1925 were varied with the primary object of

list of articles granted preferential duties, see CO 576/47: Supplemental to the FMS Government Gazette, 30 June, 1933, p. 15.

²⁹² ANM/KL SS 17 : LCP, 30th May, 1932, p. B61. Correspondence from Secretary of State on the subject dated 4th February, 1932 reads, “The new tariff proposal introduced to-day gives free entry to all articles in cash tariff produced in and consigned from a British Colony or Protectorate. The duty was 10% *ad valorem*. The tariff would cover nearly all articles not already subject to duty which were, or were likely to be, produced in the Colonial Empire, and production of which can be assisted by preference.....”. In fact the introduction of the tariff in the United Kingdom had caused a very great sensation at the time, as it was a complete reversal of the fiscal policy of the United Kingdom after very many years of so-called *free trade policy*.

²⁹³ ANM/KL SS 17 : LCP, 4th April, 1932, pp. B35-B39; LCP, 12th February, 1934, Vol. I, p. B49; 30th May, 1932, pp. B60-B61. In addition, some of the council members expressed fear that the new preferential duties would be subject to retaliation by foreign countries against Malayan and SS's produce.

providing additional revenue²⁹⁴ of which the Colony stood in urgent need at that time to help toward balancing the budget, and to standardise the duties in the Colony and the FMS, and with the object of re-diverting traffic back to the railways and buses. However, the proposal to increase the duties received a storm of objections²⁹⁵ from the unofficial members who believed that the principal and interest of the Opium Revenue Replacement Reserve Fund could supplement the budget deficit. The unofficial members argued that it was not timely to increase the duty on petrol during the trade slump. The affect would be economically disastrous and had caused considerable hardship and distress to all classes of people living in suburban areas who had to use public transport where the fares would be increased proportionately with the increase of the duties. The Colonial Secretary assured the council that the government had pledged to credit the interest generated from the Opium Revenue Replacement Reserve Fund to the general revenue account in 1932. He further reiterated that it was impossible to withdraw from the fund as the outcomes from the Opium Conference to held in Bangkok at the end of 1931 were still pending. The unofficial council members urged the government to revert the decision and substitute in its place a tax on all forms of entertainments to be known as an *Entertainment Tax*.²⁹⁶

²⁹⁴ *ANM/KL SS 17* : LCP, 31st August, 1931, Vol. I, p. B118; LCP, 12th October, 1931, Vol. I, p. B151. The proposal only affect petrol used by motor vehicles, and did not effect petrol or kerosene which was used for domestic lightning purposes by the poorer classes which the duty remains as 5 cents per gallon. The government reiterated that it was timely to increase the duties as the last time it was raised was in 1925. It was estimated that the new rate of 25 cents a gallon would yield additional revenue between \$1 and \$1.5 millions. In 1930, the FMS government imposed a 5% petrol tax on fuel oil. However, it was withdrawn within a week on representation of the mining community. The reason was due to a very low price of tin at that time where mines were working on an unrestricted output. In view of this conclusion, the Committee instead proposed an increase of the licensing fee. See *ANM/KL SS 17* : LCP, 3rd December, 1934, Vol. II, pp. C700-C703, "Report of a Joint Committee appointed to consider the effect of the competition with other forms of transport which was being caused or was likely to be caused by the introduction into Malaya of commercial motor vehicles equipped with (A) diesel or heavy oil engines and (B) producers-gas attachments and to make recommendations as to what changes, if any, in the method or incidence of taxation of vehicles and liquid fuel should be introduced".

²⁹⁵ *ANM/KL SS 17* : LCP, 12th October, 1931, Vol. I, pp. B144-B151.

²⁹⁶ *ANM/KL SS 17* : LCP, 31st August, 1931, Vol. I, pp. B118-B119; 12th October, 1931, Vol. I, pp. B144-B145. Amusement parks, such as the Great World show and the New World show in Singapore and Fun & Frolic, Limited, in Penang, and other parks in Malaya had been very popular. In addition, they suggested the fees on passport be increased following the move made by the Foreign Office of the Imperial Government where from the 19th October, 1931, the fee for British passports was increased

Two years later, in May 1933, a tax raising measure was being applied again. The applications of the *Petroleum Revenue Ordinance* were again extended to threefold amendments. Firstly, it amended the existing Ordinance by regulating import by air. Secondly, it transferred from the Treasury and from the Harbour Authorities to the government Monopolies the duty of administering the Ordinance and collecting the revenue under it. Thirdly, it made provision under which the Governor might exempt from customs duty petrol supplied to certain airplanes used for international service.²⁹⁷

Recovery Period--Post Depression (1934-1938)

In the SS and the FMS, appropriations continued to mount during the rest of the twenties until the increase was checked by the great depression in 1932. The recovery of revenue in the FMS began in 1934 of which departmental expenses gradually increased although on a scale less lavish than pre-depression period, then followed by the SS in 1935 which the revenue was recovering and expenditure upon public works and social services again began to increase. In 1937, the general revenue surplus of the Colony was \$66,886,788 of which approximately \$48,590,000 were liquid, whilst in the FMS the revenue generated, excluding the railways receipts, was \$80,864,589 against expenditure of \$71,143,470.²⁹⁸

By 1937, general surplus of the FMS had grown to \$85,880,937. The Opium Revenue Replacement Reserve Fund stood at \$30, 054,561 of which the interest

from 7/6d. to 16 shillings, and for renewal of the passport from 1 to 2 shillings. To supplement this revenue, they even suggested for consideration of government a tax on bachelors.

²⁹⁷ *ANM/KL SS 17* : LCP, 1st May, 1933, p. B93; LCP, 2nd October, 1933, pp. B158-B159; 12th February, 1934, Vol. I, pp. B13, B118-B119. In February, 1934, the bill was read the second time after being passed in July of 1933. This bill made provision whereby petroleum might be imported by road in minimum quantities of 200 gallon on receiving a permit from the Monopolies Department. The issue of the permit automatically rendered the importer liable to import duty. Then, the duty levied on petroleum under Section 6 of Ordinance No. 115 (Petroleum Revenue) and published as Notification No. 1928 in the *Gazette Extraordinary* of 28th September, 1931 was repealed and a new list of duties was enforced with effect from 1st July, 1934. Prior to the 1st July of 1934, duty on petroleum, which was governed by Section 6 of Ordinance No. 115, was 5 cents/gallon.

²⁹⁸ See Appendix 2.1. See also Lennox A. Mills; *British Rule in Eastern Asia*, pp. 89-90, 94-95, 98.

generated was credited to the general revenue account since 1936. A Revenue Equalisation Fund, kept under separate account, was created in 1937 which was known by its critics as the Next-Rainy-Day Fund, drawn upon only in the event of abnormal economic conditions. The general surplus had been used to finance heavy capital expenditure or such emergencies as the rice famine. The fund was created because the revenue of the FMS had been subject to abrupt and extreme fluctuations, and the purpose of the special fund was to neutralise that effect and avoid, e.g., the sudden and drastic economies necessitated by the Great Depression.²⁹⁹ At this juncture, some critics of the policy demanded that instead utilising the annual surpluses to create the fund, it would wise to reduce rates of taxes, while others called for an extensive programme of new public works.

As in previous similar encounters to reduce or abolish taxes, the FMS government remained adamant to the demand and refused to divert from its policy. The government contended that its expenditure upon public works was moderate and refused to make any changes in principal taxation. However, a few taxes on imported food most importantly sugar and rice, which had been imposed during the depression, were abolished or reduced. It worth noting that the decision to abolish or reduce the taxes, amongst other, its small contribution to revenue, was that the burden had fallen on heavily upon the poorest section of the Asian community.³⁰⁰

The government also rejected pleas that the annual quit rent from rubber land be reduced on the basis that despite all representations, the petitioners were able to distribute dividends to its shareholders. It was argued that the rates of tax were fixed when the price of rubber was very much higher. In another situation, there were proposals to abolish export duties on tin and rubber. They argued that they were a

²⁹⁹*C. Reps.* No. 1875. Annual Report on the FMS, 1937, pp. 117-120, cited in Lennox A. Mills; *British Rule in Eastern Asia*, pp. 99-100.

³⁰⁰*The Straits Times*, 27th May, 3rd July, 28th November, and 19th December, 1935; *The Malay Weekly Mail*, 12th November, 1936, cited in Lennox A. Mills; *British Rule in Eastern Asia*, p. 100. Annual revenue from this items was about \$3,000,000.

handicap upon Malayan producers who had to compete at the world prices, and the taxes were discriminatory in nature because they were only imposed on planters and miners. As an alternative, they suggested an increase in import duties and income tax to compensate for the massive losses of revenue if the government adopted their proposals. Paradoxically, these suggestions provoked spirited rejoinders from Malays who believed that it would increase the dividend payout at the expense of their employees and the general public who had to bear the increased import duties. However, widespread and successful evasions of the income tax in the SS rendered the experiment inappropriate and highly risky.³⁰¹

The Formative Period: World War II Tax Policy (1939-1945)

The deepening crisis in Europe had seemingly evoked more emphatic evidence of the loyalty of British Malaya to the British Empire. In November 1938, the unofficial members of the Legislative Council of the SS voted a special contribution of \$10 millions (£1,167,000) toward prosecution of the war. In the following year, April 1939, they voted an additional £1 million followed by another £1 million in 1940. Meanwhile, in May 1939, the Sultans of the FMS graciously submitted a gift of \$4 million (£467,000) for the same noble purpose. In addition, large sums were also collected for war charities.³⁰²

³⁰¹Sir Frank Swettenham, in *British Malaya*, September, 1936, pp. 119-122; Sir George Maxwell, in *The Times*, 22nd October, 1936; *The Times of Malaya*, 11th November, 1936; *Malaya Weekly Mail*, 19th November, 1936, all cited in Lennox A. Mills; *British Rule in Eastern Asia*, p. 100. For the period 1934-38 of the SS, see chapter 3.

³⁰²Lennox A. Mills; *British Rule in Eastern Asia*, pp. 90-91; CO 576/73: PFC, 30/1/1941, pp. 2-5. The following table illustrates the revenue, included the War Taxes, generated by the FMS:

Year	Revenue Collected (\$)	War Contributions to the Imperial Government (\$)
1939	70276194	2.5 million (Gift of Aeroplanes 4.0 million (Gift for Imperial Defence). These were both pre-war

As a result of the outbreak of World War II in 1939, the War Duties Bill was enacted again with an increase in almost every existing item of subject to duties.³⁰³ Not surprisingly, the new increased rates of duty set out in the council resolution were in force under the Public Revenue Protection Bill two days before it was tabled in the council.³⁰⁴ Again, within few months later, the rates of duty on liquor were increased.³⁰⁵

1940	97,202,307 (provisonal). In addition, \$6,360,660 to Deposit from War Taxation from April under the War Taxation Enactment 1940 (No. 6/40).	8.57 million (Gift) 1.37 million being xtra duties on tobacco, liquor and excise. 3.02 millio--War tax from April to August 1940, under the War Taxation Enactment 1940 (No. 6/40). 3.34 million was pledged for future remittance.
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On top of the amount remitted above, the FMS government remitted another £4,686,354 from the proceed of the \$20 million War Loan issued in 1940. In addition, the FMS government remitted another \$2,260,095 from the proceed of the War Saving Certificates issued in 1940. [Equivalent of the Straits Dollar to the Sterling was $2\frac{1}{4}\frac{5}{32}d$.

³⁰³ ANM/KL SS 27 : LCP, 3rd February, 1941, pp. 46-47. A new schedule of increased duties, declared by virtue of Section 3(1) of the Liquors Revenue Ordinance, enacted under the resolution notified in Gazette Notification No. 3857 in the Gazette Extraordinary of the 11th December, 1939, were repealed by Gazette Notification No. 618 in the Gazette Extraordinary of the 14th February, 1940.

³⁰⁴ ANM/KL SS 27 : LCP, 26th August, 1940, pp. 88-89. The tobacco tariff was last amended at a meeting of the council on the 11th December, 1939, when the new rates of duty were introduced as part of the War Contribution to the Imperial Government.

Types of Tobacco	Full Duty (Cents/lb)	Preferential Duty (Cents/lb)
(a) Cigars and Snuff	300	250
(b) Cigarettes	150	125
(c) Manufactured Tobacco not comprised: I) Imported in airtight containers II) Other	135 110	125
(d) Un-manufactured Tobacco	110	100

Provided further that the preferential rates specified were not applicable unless 25% of the value of such cigarettes or such manufactured tobacco was the result of labour within British Empire.

³⁰⁵ ANM/KL SS 27 : LCP, 3rd February, 1941, p. 48. A new schedule of increased duties of 50%, declared by virtue of Section 4(1) of the Tobacco Duties Ordinance and imposed under the Public Revenue Protection Ordinance, were enacted under the resolution notified in Gazette Notification No. 3009 in the *Gazette Extraordinary* of the 30th August, 1940:

Types of Tobacco	Full Duty (Cents/lb)	Preferential Duty (Cents/lb)
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This additional taxation, which was introduced simultaneously in the Malayan Administration, was designed to raise further money for the prosecution of the war. The increase of 25% duties imposed as from 1st December, 1939, raised in 1940 the sum of \$871,000 which had been remitted to the Imperial Government. This joint effort in February 1941 had resulted in an increase of 50% to the duties of liquors, with few exceptions.³⁰⁶ Meanwhile, in the FMS, the War Taxation Enactment of 1940 was amended again with the objective to raise revenue and support the Imperial government. Customs duty on rubber was raised from 2.5% to 5% with effect from 1 February, 1941, whilst the same tax hike via the mechanism of *ad valorem* export duties was imposed on tin ore.³⁰⁷

It worth noting that at the outbreak of the war, the death duties taxation system were still not standardised and some states in a very antiquated forms. In the four FMS, the two Settlement of Penang and Malacca, and Johore, estate duty which was amended from time to time to embody improvements introduced in the United Kingdom and also to suit local requirements, was payable on all property passing or deemed to pass on the death of a person, whilst in Perlis, it was payable under the Administration of Estates Enactment 1338 and collected by the Court on property belonging to the deceased person actually disposed of by the Court. In Kedah and Trengganu, it were leviable by

(a) Cigars and Snuff	350	300
(b) Cigarettes	175	150
(c) Manufactured Tobacco not comprised: I) Imported in airtight containers II) Other	175150	150
(d) Un-manufactured Tobacco	135	125

Provided further that the preferential rates specified was not applicable unless 25% of the value of such cigarettes or such manufactured tobacco was the result of labour within British Empire.

³⁰⁶ *ANM/KL SS 27* : LCP, 3rd February, 1941, pp. 47-48. In case of brandy imported in bottles, the increase was more than 50% to bring it into line with other liquors such as whisky, gin, and, sparkling and still wines.

³⁰⁷ *CO 576/73*: PFC, 30/1/1941, pp. 4-9. At this time, the Petroleum (Amendment) Bill and the Estate Duty Bill, to supplement the increase in revenue, were tabled in the Federal Council.

means of a Stamp Duty on affidavits for probate and exacted by the Treasury, whilst in Kelantan, the death duties (called Court Fees), being similar to the United Kingdom legislation prior to the year 1896, were levied by various Courts according to the value of the estate or property distributed by such Courts.³⁰⁸

At this juncture, the properties of the deceased were not spared from the war efforts to increase revenues for the government. With the objective to preserve revenue generation, in the event that new legislation being introduced, the previous legislation was kept alive to apply to the estates of deceased persons dying prior to the coming into force of the new legislation. This policy in effect resulted in a large number of Enactments and Ordinances being actively used by the Estate Duty Office. Naturally, in 1940, with the war taxation being re-introduced in the SS and FMS, increased rates on the estates of deceased persons of a value in excess of \$175,000 rising to maximum of 60% on estates of \$20,000 and over. However, due to strong public representations, in 1941 the rates on the large estates were reduced, maximum being 40% on estates of \$5,000,000 and over.³⁰⁹

By March 1941, when the extension of War Duties Ordinance, 1940 was being discussed in the Legislative Council, the SS government decided that certain amendments to the Estate Duty Schedule be made to scale down the rates of estate duty, to make provision for the payment of estate duty by installments on the lines of the English Finance Act, to reduce the rate of interest payable when the estate duty was paid by installments, and to provide that government Bonds might be used in payment of estate duty at market value at the date when they were surrendered.³¹⁰

On 18 May, 1942, the Japanese Imperial Government re-opened the Estate Duty

³⁰⁸CO 576/76, "Annual Report of the Estate Duty Office of the Federation of Malaya, 1947", 28 February, 1948, pp. 1-2.

³⁰⁹Annual Report of the Estate Duty Office of the Federation of Malaya, 1947, *op. cit.*, p. 2.

³¹⁰ANM/KL SS 27: LCP, 31st March, 1941, p. 76.

Offices. Most of the office files from the old FMS that had been removed by the British Colonial Administrators to Singapore during their retreat were recovered and taken back Kuala Lumpur where the collection of estate duty was recommended. Each Malay State was autonomous and the old records were distributed accordingly. At a later date of the occupation, in the absence of proper legislation, the tax administration was in chaotic. The Japanese Administration then ordered the aggregation of the estate of a deceased person wherever situated throughout the Malay Peninsula for the purpose of fixing the rate of duty. Unpaid estate duty on previously accessed estates were collected where possible. However, the Japanese Government efforts to secure revenue generation was subject to resistance from the public. Very few shares, mining properties, bank balances or insurance policy were disclosed. The situation was further exacerbated by the inconsistency of the properties valuations. The value of rubber lands and movable properties increased with inflation whilst town properties continued to be valued on pre-war assessment rates, and buildings erected since 1934 were valued at inflated rates. During the month of August, 1945 when it was obvious that the Japanese had lost the war, the taxpayers saw golden opportunity to settle their tax dues with lesser financial implications before the British Administration resumed their measures to collect outstanding tax dues. Large sums in inflated currency were paid into the Estate Duty Offices to pay outstanding dues.³¹¹

Post War Tax Policy (1946-1957)

After the war ended, with the unconditional surrender of the Japanese Imperial Army, Malaya's economy and civil administration were in a fragmented and chaotic state.³¹²

³¹¹ Annual Report of the Estate Duty Office of the Federation of Malaya, 1947, pp. 3-4. As expected, the Estate Duty Office in Kuala Lumpur officially opened at the beginning of May, 1946 quickly followed by the offices in the other states comprising of the Federation of Malaya. In December the same year, the old FMS Enactment o. 7 of 1941 was made applicable to the whole of the Federation of Malaya vide the Estate Duties (Transitional Provisions, No. 2) No. 35/46 in respect of estates of deceased persons dying on or after 1 April, 1946 as a temporary measure pending the passing of the new Ordinance. The researcher has checked all tax records in the National Archives Kuala Lumpur and the Public Records Office in London pertaining to Japanese Occupation. It seems that the Japanese Military Administration took all these primary sources to Japan or has destroyed them.

³¹² Gullick, p. 83; R. Allen, *Malaysia: Prospect and Retrospect* (London, 1968) p. 82.

Britain regained control and administered the country through the British Military Administration (BMA) from September, 1945 to March, 1946.³¹³

In the last few months of 1948, the PKM (Malayan Communist Party) and their supporters attempted to disrupt the recovering economy in the midst of work of rehabilitation and further development in the economic and social fields had been hampered and delayed by the diversion of finance and effort necessary to deal with the problems created during the emergency. The year 1948 saw Malaya had been fortunate compared with other countries involved in the war in the matter of its recovery from the effects of the war. This recovery owes primarily to the fact that Malaya was a producer of raw materials which were urgently required by the rest of the world.³¹⁴

The first step taken by the British Administration was to re-formulate a fiscal policy with measures to combat inflation. For instance, the Joint Committee meeting on 24th & 25th April 1948 in Kuala Lumpur began to discuss general questions as to the rehabilitation relief and the principles of a Pan-Malayan assessment. For example, all profit from the growing or mining of products subject to export duty, or in the case of Singapore and Penang assessment on rubber in lieu of export duty, should be exempted from income tax for the year of assessment 1948.³¹⁵

In Malaya, tin and rubber, being the largest commodities exported, were subject to restriction programmes and buffer fund to boost and stabilise the prices of rubber in the world market. Proposal for the creation of the stabilisation fund for tin was also being considered. In addition, measures to amend and unify the laws relating to various tax mechanisms, such as The Stamp Bill of 1949, were also being considered.³¹⁶ In

³¹³See Chapter 2 Part II.

³¹⁴CO 941/9: PFC, "High Commissioner's address to the Federal Council", 18/11/48, pp. B524-B537.

³¹⁵CO 941/9: PFC, February 1948 - February 1949.

³¹⁶CO 717/204/1: PFC, 1951; CO 717/204/6: PFC, 1951.

early of 1951, the government though the Federal Council mechanism contemplated of increasing the customs duties as a means of combating the present inflationary situation and at the same time to generate additional revenue.³¹⁷ From early of 1954 to late 1957, not much changes were made to the structure of taxation except some increases in the rates of customs duties.³¹⁸

³¹⁷CO 941/13: PFC, "Minutes and Council Papers of the Federal Legislative Council", 25/4/51, pp. B183-B185, "Report of the Taxation Advisory Committee", 25/4/51, pp. B183-B185, C163-C164. The Committee recommended that in order to increase revenue, the following measures be adopted:

Current	Proposed
Tax on sweepstakes was 20% but no tax on private lotteries while public lotteries were illegal	20% tax on all sweepstakes be extended to all lotteries
Import duty on whisky, brandy & samsu	Increase tax by 50%. Increase of \$1 per bottle for whisky, brandy by \$2 per bottle. Samsu by \$12 per gallon from \$22 to \$34.
Excise duty	Increase from \$18.78 to \$31 per proof gallon. Other intoxicating liquors, increase from \$22 to \$34.
Import duty on cycles & accessories	Present specific duties canceled, and previous <i>ad valorem</i> duty of 20% full duty and 10% preferred duty being restored.

It was estimated that these measures would generate additional revenue of \$6,250,000 per annum.

³¹⁸CO 941/32: PFC, March 1949-January 1950.

Chapter Three

The Development of Income Taxation

Chapter 3

Development of Direct Taxation System (Income Tax)

Introduction: Origin and Early Years of Direct Taxation

When income tax was first introduced in the United Kingdom in 1799,³¹⁹ it was initially designed to be simple and not difficult to understand for the layman. Ironically, it is an unfortunate fact that income tax legislation must by its nature, be abstract and technical, and can never be easy to comprehend. This was so in the case of the United Kingdom. After its relative success in the United Kingdom, its social services had cost the taxpayers something very much more than they paid in other part of the British Empire--with all kinds of heavy taxes and in income tax.

Following the Indian Mutiny in 1857, taxation on income was introduced but received with much opposition in India. The income tax introduced in due course in the Straits Settlements and the Malay Peninsula can be described as a blend of the United Kingdom, India, and Ceylon Income Tax Ordinances. As a result of India's successful enforcement of income tax, the Government in India disclosed its intention to extend the system to the Straits Settlements. As a result public meetings were held in 1860 in Singapore and Penang to petition the Indian Legislative Council and the British Parliament against the extension of income tax to the Straits Settlements. Merchants who had enjoyed light taxation throughout their entire business tenure in the Straits Settlements protested that they already paid significantly through the collection of opium and liquor taxes. They suggested that if the Government wanted to raise more revenue, it might well resurrect the gambling farms. Even though the Governor of the Straits

³¹⁹R. W. Hoyle; *Tudor Taxation Records: A Guide for Users* (PRO Readers' Guide No. 5, PRO Publications, London, 1994) pp. 1-5; *ANM/KL, P/HDN 1, 1947*, "A Report to their Excellencies the Governors of the Malayan Union and Singapore, with recommendations, including a draft Bill, and proposals for administration and staffing", p. 17.

Settlements, Cavenagh, refused to support the petition on the basis that the merchants had always sought to avoid taxation through previous petitions and other dubious means, he protested to the Indian Government that the “complicated and inquisitorial nature” of the proposed income tax regulations and procedures would be difficult to administer and unfair to lower income groups.³²⁰ Bound by directive from the Indian Government, however, Cavenagh had no choice but to proposed an alternative scheme to enforce the new tax system. Cavenagh believed that since the merchants-particularly the Asian ones-were status conscious, tax returns would be highly accurate because in order to be accepted in the higher class group, they must declare their true or even higher income. Even though the Cavenagh theory looks to be an ideal tax system, favouring the Government with minimum tax evasion, Calcutta decided not to proceed with his plan. The Calcutta Government also withheld its plan to enforce the law passed in 1861 in India with regard to tax on income derived from “arts, trades and dealings”. In fact Cavenagh had previously objected to this law on the ground that it would be expensive to administer and unfair to Indian and Chinese taxpayers who had been burdened with excessive taxation, while it gave exemption to officials and certain Europeans in the population.³²¹

³²⁰C.M. Turnbull; *The Straits Settlements 1826-67 -- Indian Presidency to Crown Colony*, pp. 202-203.

³²¹C.M. Turnbull; *op. cit.*, p. 203.

Tax Policy: 1900-1930

The year 1910 had been a crucial financial year for the Colony and the Federated Malay States. The early part of the year saw the advent of a new farm system which was under full control of the Government of the Straits Settlements with effect from 1st January and the Federated Malay States with effect from 1st January, 1912³²² as a result of a widespread Anti-Opium movement locally and abroad, especially in England. As earlier forecast, the new farm system and a shift in opium policy promulgated by the Imperial Government were to curb the use of chandu and was anticipated to have a significant effect on the most important revenue of the Colony since Stamford Raffles and Francis Light's period.³²³ The introduction of a petroleum tax was not enough to neutralize its effect on the Colony's budget. The situation was further aggravated by the abolition of the light dues under the provisions of the Light Tolls Act in October, 1910, to preserve the entrepôt status of the ports and to attract more calling vessels away from rival Dutch ports.³²⁴ On the other hand, until the end of 1910, for reasons which were unclear, the Government did not exploit at least the major commodities still susceptible to utilization as sources of revenue--tea, tobacco and matches. In fact in taxing those items there arose no question of preference or protection.³²⁵ However, the Colonial Secretary was pessimistic that those commodities would not be enough to restore the financial health of the Colony. The government contended that the additional revenue generated would be scarcely sufficient, and in connection with the collection of that sum, it was undeniable that great inconvenience would be inflicted on the trade, and great expense would be required in the way of bonded warehouses and the general

³²² *ANMKL P/P3* : PFC, 25th July, 1912, p. B46, "The Opium and Chandu Enactment, 1912"; *ANMKL P/P3* : PFC, 25th July, 1912, pp. B55-B56, "High Commissioner Address"; *ANMKL P/P3* : PFC, 13th November, 1912, pp. B87-B105, "The Supply Enactment, 1912". It worth noting that all the Malay rulers voiced their desire for the gaming be totally abolished.

³²³ *ANM/KL SS 17* : LCP, 23rd September, 1910, pp. C235-C246, "Address of His Excellency the Governor Sir John Anderson at a meeting of the Legislative Council".

³²⁴ *ANM/KL SS 17* : LCP, 23rd September, 1910, p. B114; LCP, 7th October, 1910, p. B123.

³²⁵ *ANM/KL SS 17* : LCP, 7th October, 1910, p. B124, "Supply Bill".

paraphernalia of collecting the duty.³²⁶

By the end of 1910, the successful working of a system of indirect taxation on a large scale, such as the opium and liquors farms system and petroleum tax, had been stretched to its limit as reflected in the Governor's opening address to the Council:³²⁷

"With the petroleum duty imposed last year we have reached the limit of the area to which indirect taxation can be extended without the establishment of a Custom House, and the destruction of that freedom which is essential to the maintenance of our proud position amongst the collecting and distributing centres of the world's commerce. Retrenchment has been pressed as far as possible and we must be prepared to find some other source of revenue to replace what we must lose as the consumption of opium falls with the progressive increase in price due to restricted output. The burdens already placed on the owners of house property.....The only sound policy of taxation is to distribute the burden over the community as equitable as possible, and the best known instrument for that purpose is an income tax".

It should be noted that the idea to re-impose income tax was first mooted by A.R. Adams, unofficial member, during the discussion on the Supply Bill in 1908 and again referred to by the Colonial Secretary of the Straits Settlements in the following year. Again in September, 1910, after the Governor's opening address, the Colonial Secretary

³²⁶ *ANM/KL SS 17* : LCP, 18th November, 1910, p. B144. Statistics show estimated additional revenue generated by three major commodities:

Commodity	Year	Av. Annual Imports	Av. Annual Exports	Local Consumption	<i>ad valorem</i> Duty of 5% (\$)
Matches	1905 to 1909	78,566 cases	65,495 cases	**13,071 cases or \$264,690	13071
Cigars, and Cigarettes	1909	\$2,945,797	\$969,571	\$1,976,226	98811
Tobacco	1909	\$4,536,429	\$2,928,807	\$1,607,622	80381
Total Revenue					192263

**95% of these matches were Japanese valued at \$20 a case, 5% were European valued at \$25 a case.

³²⁷ *ANM/KL SS 17* : LCP, 23rd September, 1910, pp. C235-C246, "Address of the Governor Sir John Anderson at a meeting of the Legislative Council".

pledged that the introduction of a petroleum tax would be sufficient to defer the evil day of income tax. Paradoxically enough, when the statement by the Colonial Secretary was made, the Council was informed that an official visit had already been made to Calcutta to look into the working of the tax there and subsequently a draft bill was prepared. At this juncture, despite stating in his preamble “....although we are, Sir, as you say, the most lightly taxed community in the world.....”, the Colonial Secretary assured Council members that “It is not proposed to ask the Council to impose an income tax”.³²⁸ On the other hand, the decision to send officials to Calcutta pointed to the intense desire of the Government to impose a tax on income. It is worth noting that when the diminution of opium revenue was imminent as a result of the anti-opium movement, A.R.Adams, during the Council meeting in 1908 expressed his fears that the introduction of income tax, which had been imposed in India, would definitely be received with a howl of indignation. In fact the mere suggestion of it during the meeting had created a storm of opposition. He added that although any new form of taxation must be inevitably unpopular, it was impossible to conceive a tax policy which was fairer to those who were called upon to discharge that duty which they owed to the country of their adoption, the country to which they were indebted for their ability to make a fortune with which they trust to retire to their homes.³²⁹

However, as expected, barely a month later, a *Bill for Imposing a Tax on Income*³³⁰ suggested to come into operation with effect from 1st January of 1912 in the

³²⁸ ANM/KL SS 17 : LCP, 23rd September, 1910, p. B113, “Supply Bill”.

³²⁹ ANM/KL SS 17 : LCP, 28th October, 1908, p. B114, “Supply Bill”.

³³⁰ ANM/KL SS 17 : LCP, 18th November, 1910, pp. B144-B147. The contents of the bill were:

Definition of Income	Any income, any profit or gains accruing to any person in the Colony from any part of the world, or accruing to any person in any part of the world from the Colony.
Chapter II: Liability to Tax with exemption to Government Bodies, Boards, and unprofitable organisations.	Rate of tax was proposed at 1% in a dollar. This rate was incorporated in the body of the Ordinance so that it will be impossible for the Governor in Council by a sudden freak to decide to raise the rate with the consent of the Council.

Colony but not in the Federated Malay States,³³¹ and which had already been drafted with the anticipated need of the Straits Settlements and the Federated Malay States following a visit to Calcutta by the Colonial Secretary and his team, was introduced in the Straits Settlements Legislative Council in October, 1910.³³² The reason Government had given for the need to introduce this form of taxation was that they expected an early extinction of the opium revenue.³³³

At a subsequent meeting, on 25th November, 1910, the bill was tabled for its second reading but due to strong opposition it was deferred again: the anticipated revenue and expenditure for 1912 had not yet been finalised.³³⁴ The anticipated early

Chapter III: Assessment	Clause 8 provides that every person, when called upon, is to give a return of his income. In Clause 9, it is the duty of the employer to report employees income, whilst Clause II provides for agent, trustee, principal officer of company and association to report any proceed made to another person.
Chapter IV: Collection of Tax	Periodical deduction on emolument, interest, salary, etc.
Chapter V: Revision of Assessment	Provides avenue for taxpayer to submit petition against assessment, reference of cases to Commissioners of Taxes , and Court Proceedings.
Chapter VI: Recovery of Tax	Similar provisions as to the recovery of arrears of land tax or Municipal taxes.
Chapter VII: Supplemental Provisions	Provisional assessment, penalties etc

³³¹ *ANM/KL SS 17* : LCP, 19th January, 1920, p. B9, "Income Tax Bill".

³³² *ANM/KL SS 17* : LCP, 18th November, 1910, pp. B143-B1147. The Colonial Secretary reiterated at that time the Government had anticipated a diminution of the revenue from the consumption of opium. He believed that an income tax offered the best prospect of a fair incidence of taxation. He continued, "I am not here to today to defend the general principles of an income tax, but rather to defend the imposition of such a tax in this Colony". Tan Jiak Kim requested that a longer notice of the second reading should be given. However, the Governor disagreed since the Government's intention to introduce this bill had been before the public for a very long time.

³³³ *ANM/KL SS 17* : LCP, 19th January, 1920, p. B9, "Income Tax Bill".

³³⁴ *ANM/KL SS 17* : LCP, 25th November, 1910, pp. B149-B155. The Council were informed that most of the objections raised were the possibility of unfair taxation between an employee and a person engaged in self-employment. In this respect it was contended that the Oriental traders, mostly Chinese, would be

diminution of opium revenue was the aftermath of the Imperial Government of Great Britain's worldwide shift in policy to curb further consumption of opium by the public. The critics claimed that the Imperial Government was solely responsible to make good the loss of revenue. By this time, avenues for other methods of taxation had not yet been exhausted. Commodities such as tea, matches, cigars and cigarettes, tobacco, liquors and petroleum could be taxed at higher rates and the government of the Straits Settlements had not embarked on a full retrenchment programme to reduce certain extravagant expenditures such as the Harbour Improvement which only gave benefits and protections to a few insurance companies.

Finally, the bill, which had provoked such a storm of opposition was withdrawn at its second reading on 27th January, 1911.³³⁵ The reasons for the government of the Straits Settlements backing out of its intention to enforce the new tax may be epitomized as follows:³³⁶

1. It was contended that it was not timely to introduce income tax as the inhabitants of the Colony had not attained that degree of civilization, nor were they sufficiently educated to understand such a delicate method of taxation.
2. Even though nobody in the Legislative Council questioned the basis of equity in an income tax system it was felt that this did not apply in the Colony. The statement "But where, Sir, I ask, is the equity of transferring the burden of taxation from the masses and placing it on the shoulders of the few? The revenue from opium is borne by about 300,000 Chinese, whereas the revenue from an Income tax would be derived from, I should say, not more than about 7,000 people.....to my mind, it is grossly unfair and grossly inequitable" appears to support the basis of the argument.

highly likely to be engaged in tax evasion. At the same time, there were suggestions that the *ad valorem* duty on matches, tobacco, cigar and cigarettes be raised to 50%. The Colonial Secretary declined the suggestions on the basis that it would have great repercussion on the poorer classes.

³³⁵ ANM/KL SS 17 : LCP, 27th January, 1911, pp. B2-B16; LCP, 29th September, 1911, pp. C108-C118, "Address of the Governor Sir Arthur Young at a meeting of the Legislative Council".

³³⁶ ANM/KL SS 17 : LCP, 27th January, 1911, pp. B2-B16.

3. The government's intention to make additional contribution to the Imperial Government from the general revenue in addition to the already committed 20% towards the annual military contribution at the expense of necessary public works which were so much on arrears. The general public feeling at that time was that the military contribution should be reduced, and not increased. In addition, a demand by some council members for exclusion of revenue generated by income tax from the calculation of defence contribution payable was bluntly not entertained by the Imperial Government.³³⁷

After these extensive representations by the public, no further reference to income tax appears to have been made until 16th June, 1916, when, in the course of a debate in the Legislative Council on a motion to make a contribution towards Imperial War Expenditure, a proposal was put forward to supplement the contribution by means of the proceeds of an income tax. Arising out of this, a bill for imposing an income tax was framed, and laid out to the Council but was met with considerable opposition at first, and was, for a time, superseded by a counter-proposition for a *Schedule of new Taxes*, and increased rates of some existing duties. Subsequent to this event, a committee was appointed which reported some three months later. The Committee made two recommendations; one was relating to the imposition of an income tax, and the other relating to the imposing of taxes other than income tax. The former received a majority votes of 11 against 9, whilst the latter received unanimous votes. The latter recommendation was related to taxes on landlords and tenants, and on matches, and on the profits of locally registered companies, and on theatre tickets, etc. Before the second reading of the bill, a petition signed by the representatives of all communities in Singapore except the European community, was disclosed to the Council. They argued that the Income Tax Bill would affect them all, and some of them heavily. Some of the taxes suggested such as the tax on matches and the increased tax on cheaper tobacco would burden very heavily on the poor. Accordingly this petition was to represent the poor. The member of the deputation was of the opinion that a War Tax to be based on

³³⁷ ANM/KL SS 17 : LCP, 19th January, 1920, p. B9, "Income Tax Bill".

income was the tax which should be imposed, and it was the fairest tax. The reason that they gave for stating that it should be called a “War Tax”, instead of an income tax, was that it should be clearly shown that it was a temporary tax measure.³³⁸

The Report and the draft bill which accompanied it were considered by the Council, but after undergoing a considerable amount of revisions, the bill was finally withdrawn. However, a revised bill to impose a tax on the basis of income, the revenue to be applied to War purposes, was substituted which eventually became Ordinance No. 8 of 1917, published in the *Government Gazette* in March, 1917, but with retrospective effect, as provided in the Ordinance, from 1st January, 1917.³³⁹ When the bill first came into operation, total collection of the War Tax was anticipated to be \$3,600,000 (£420,000 sterling).³⁴⁰ However, by the end of 1917, revenue generated was more than anticipated at \$3,820,000. Without delay, a sum of £400,000 sterling (\$3,410,000) was then remitted to the Imperial Government, in accordance with the purposes of the Ordinance.³⁴¹ During the first year of its implementation, a portion of the population in

³³⁸ *ANM/KL SS 17* : LCP, 8th January, 1917, pp. B5-B19, “War Duties Bill”; 14th October, 1918, pp. C95-C96, “Address of the Governor at a meeting of the Legislative Council”. See also Report of the Taxation Committee appearing in the *Government Gazette* of the 23rd December, 1916.

³³⁹ *ANM/KL SS 17* : LCP, 8th January, 1917, pp. B7-B8, B32-B34, “War Tax Bill, 1917”. The rate of tax agreed upon varied from 1 cent to 6 cents in the dollar on incomes varying from \$3,000 to \$12,000 and over, per annum. See also *ANM/KL SS 17* : LCP, 1st October, 1917, p. C75, “Address of His Excellency the Governor Sir Arthur Young at a meeting of the Legislative Council”; *ANM/KL, P/HDN I, 1947*, p. 2.

³⁴⁰ On top of that amount, the Government also remitted £201,394 which was due to the Colony on account of the Military Contribution for the three years ending the 31st March, 1916, exceeding the cost of the garrison. See *ANM/KL SS 17* : LCP, 1st October, 1917, p. C79, “Address of the Governor Sir Arthur Young at a meeting of the Legislative Council”. In addition, with the World War I going into its 4th year and the Imperial Government’s daily war expenditure mounting to £7,000,000, the Government under Ordinance 17 of 1916 subscribed \$42,063,700 and a sum of £4,939,000 with interest bearing of 5.5% per annum was lent to the Imperial Government in London for the prosecution of the war. The loan closed on 15th November, 1917. See *ANM/KL SS 17* : LCP, 27th May, 1918, pp B33-B37, “War Loan Bill”.

³⁴¹ *ANM/KL SS 17* : LCP, 3rd December, 1917, pp. B146-B 149, “War Tax Bill, 1917”. Mr. Pountney, as the Collector-General of the War Tax Department, explained that total cost of establishment, including the portion borne by the Government, amounted to \$65,000, equivalent to 1.7% of the gross collection. By the end of 1917, \$260,000 was refunded (3,850 taxpayers had claimed their refunds). These refunds were in relation to shareholders in local companies who had paid tax in the United Kingdom and from

the Colony, which had been assessed and paid the tax, was claimed by the government to be quite normally distributed.³⁴²

The provisions of the 1917 Ordinance of the Straits Settlements were continued by re-enactment in each of the two years immediately following, and the tax was levied and collected under the authority of the War Tax Ordinances, 1918 and 1919.³⁴³ When the *War Tax Ordinance of 1918* was enacted, the government made a costly concession to rubber planters, due to diminution of business profits, but despite this, revenues from War Tax continued to rise steadily. In the 1918 Ordinance, major amendments were instituted. In the definitions of “annual value, income, and total income”, exemption in favour of certain shipping companies was withdrawn; it was found that the countries whose nationals benefited by that particular exemption did not give fair reciprocal treatment to the Colony. In addition, “deductions from income”, the treatment meted out to the cultivators of rubber, was also extended to the tin miners, so that tin miners who paid export duty in the Federated Malay States would not have to pay War Tax in the Colony on the same income.³⁴⁴

whose dividends the local companies had deducted at source the War Tax. See also *ANM/KL SS 17* : LCP, 14th October, 1918, p. C95, “Address of His Excellency the Governor at a meeting of the Legislative Council”.

³⁴²*ANM/KL SS 17* : LCP, 2nd September, 1918, pp. C57-C58. See Appendix 1.

³⁴³*ANM/KL, P/HDN 1, 1947*; *ANM/KL SS 17* : LCP, 21st January, 1918, pp. B15-B17, “War Tax Bill”; LCP, 30th December, 1918, pp. B172-B174, “War Tax Bill”. The Treasurer submitted that the increase was partly due to the excellent administration of the Collector-General of War Tax, Edwy L. Talma and his staff. War Tax collected under the War Tax Ordinances of 1917, 1918, and 1919 were as follows:

Year of Ordinance	Realized (\$)	Remitted to the Imperial Govt. (£)	Departmental Expenditure (\$)	Refunds (\$)	Total Incomes Assessable (\$)
1917	3752681	400000	32608	202147	68580560
1918	4168710	475000	37635	54191	79702667
1919	4784373	525000	43931	70055	89376990

See *ANM/KL SS 17* : 1920, pp. C165, “Memorandum of Information and Statistics to accompany the Governor’s Address to the Legislative Council on the introduction of the budget for 1921”.

³⁴⁴In the first year, revenue collected was £413,000. In 1918, there was an increase of 14% to £470,000. *ANM/KL SS 17* : LCP, 30th December, 1918, pp. B172-B173, “War Tax Bill”.

The *War Tax Ordinance of 1919*, reproducing the expired War Tax Ordinance of 1918 and imposing a tax on income of \$3,000 or more per annum,³⁴⁵ was advanced with two major changes. Firstly, the elimination of Clause 6(j) made it obligatory upon foreign shipping companies whose ships used the port to pay war taxes; secondly, introduction of the taxation of a partnership entity, an adaptation from the Indian Act according to which in India partners were separately assessed. For this purpose, the amendment under Clause 44 was modified from the *English Income Tax Act of 1918*.³⁴⁶

The period from 1908 to 1918 saw a tax policy with reduced expenditure specially formulated by the Straits Settlements Government, through its built-in government majority on the Legislative Council, to solely devoting part of its revenue, generated from the provisions of the War Tax, Liquors and Tobacco Ordinances, to assisting the Imperial Government to carry on with the conduct of the war.³⁴⁷ The War

³⁴⁵ *ANM/KL SS 17* : LCP, 6th October, 1919, p. C109, "Address of His Excellency the Officer Administering the Government Frederick Seton James at a meeting of the Legislative Council".

³⁴⁶ *ANM/KL SS 17* : LCP, 13th January, 1919, pp. B14-B19, "War Tax Bill". Despite receiving strong opposition for the first proposal, the motion was passed on a vote of 10:4. See also *ANM/KL SS 17* : LCP, 27th January, 1919, pp. C14-C15, "The War Tax Ordinance, 1919: Amendments to the bill for imposing a War Tax on the basis of income recommended by the Select Committee".

³⁴⁷ During 1918, the Government had embarked a policy of economy that had been adopted in the SS's expenditure ever since the war broke out. That policy had been dictated by: 1) Conservation of all resources in order that more money could be devoted to the purpose of assisting the Imperial government in carrying on the war, 2) The cost of material had significantly enhanced resulting in the cutting of the expenditure on Public Works. The remittance of £788,741 to the Imperial Government; the breakdown figures were as follows:

Type of Compulsory Remittance to United Kingdom	Amount Remitted (£)
Contribution Accounts (Derived from the Liquors and Tobacco Duties)	200000
War Tax Income	400000
Balance of Defence Contribution	118741
Interest on 6% War Loan	50000
Total Remittance	£768,741

See *ANM/KL SS 17* : LCP, 14th October, 1918, pp. B126-B127, "Supply Bill--For Making Provision for the Public Service for the year 1919". Despite the £400,000 remitted in 1917, the Governor, in his opening address, hoped that in 1918, a larger sum could be remitted to the Imperial Government. See

Tax assessments for 1917 to 1919 were considered successful in generating additional revenue to assist the Imperial Government in the prosecution of the war. Even though the statistics do not show the number of taxpayers by race, it indicated an uneven distribution of wealth among the major races in the Straits Settlements. The native Malays who were mostly small scale farmers, excluding the Arabs who were wealthy traders, were among the poorest class in the Straits Settlements, and the volume of assessments indicated that commercially profitable businesses were dominated by Europeans and Chinese.³⁴⁸

In the following year, during the second reading of the *Income Tax Bill of 1920*,³⁴⁹ the reasons which led to the proposal of 1910 being withdrawn were recapitulated by W. Lowther Kemp who said that the proposal was no longer in the form of a voluntary gift to the Imperial Government but a direct tax on the community. At this juncture, it was also suggested that income tax be imposed in both territories, the Straits Settlements and the Federated Malay States.³⁵⁰ The phobia amongst the European and Chinese business community that the War Tax would become a tax on income finally became a reality. After obtaining the blessing of the majority Council

also *ANM/KL SS 17* : LCP, 14th October, 1918, p. C92, "Address of the Governor at a meeting of the Legislative Council".

³⁴⁸ *ANM/KL, P/HDN 1, 1947*, p. 35.

	1917	1918	1919
War Tax Assessments (\$) Collected	3531738.88	4160444.91	4728447.26

³⁴⁹ *ANM/KL SS 17* : LCP, 19th, January, 1920, pp. C2-C4, "The Income Tax Ordinance, 1920: Amendments to the bill for imposing a tax on income recommended by the Select Committee". See also *ANM/KL SS 17* : LCP, 12th, April, 1920, pp. C29-C39, "The Income Tax Ordinance, 1920: Rules made by the Governor in Council under Section 59"; *AMN/KL SS 11, Government Gazette Extraordinary* (Notification No. 469), 12th March, 1920, "Rules made by the Governor in Council under section 59 of the Income Tax Ordinance, 1920, pp. 493-503". See also *ANM/KL SS 17* : 5th July, 1920, p. C82-C94, "Finance Act, 1919: Part II: Income Tax". See also *ANM/KL SS 17* : LCP, 19th December, 1919, pp. B189-B195. At this juncture, the idea to introduce Wax Tax Ordinance in the FMS was abandoned.

³⁵⁰ *ANM/KL SS 17* : LCP, 19th January, 1920, pp. B9-B17, "Income Tax Bill". After going through numerous amendments, the bill was read for the third time and passed.

members, in 1920, the War Tax was converted into an income tax³⁵¹, which was re-imposed in 1921³⁵² and 1922.³⁵³ The proceeds, however, continued wholly in 1920 and partly in 1921, to be used for War purposes, but in 1922³⁵⁴ when it was proposed to retain the tax as an income tax³⁵⁵ purely for the general revenue purposes of the Colony, public agitation brought about its removal.³⁵⁶

³⁵¹ *ANM/KL SS 17* : LCP, 19th January, 1920, pp. B9-B17, "Income Tax Bill". By July of 1920, the Income Tax Department was officially formed in the Straits Settlements with a special vote of \$45,000 for the salaries of the Staff and other expenses. See *ANM/KL SS 17* : LCP, 5th, July, 1920, p. B93.

³⁵² *ANM/KL SS 17* : LCP, 13th, December, 1920, pp. B217-B223, "Income Tax Ordinance, 1921"; *AMN/KL SS 11*, *Government Gazette Extraordinary* (Notification No. 357), 26th February, 1921, "Rules made by the Colonial Secretary under section 59 of the Income Tax Ordinance, 1920 as amended by the Income Tax Ordinance, 1921, pp. 440-451". The War Tax collected under the 1919 Ordinance was \$4,700,000. £525,000 had been remitted to the Imperial Government as War Tax for 1919. Total collection under the three War Tax Ordinances of 1917, 1918 and 1919 was £1,400,000. For financial year 1921, principal revenues were estimated under the following heads:

Principal Head	Estimated Revenue (\$)
Opium	8500000
Liquors and Tobacco	1227000
Income Tax	5900000
Land Sales	2022000

See *ANM/KL SS 17* : 1920, pp. C157, "Memorandum of Information and Statistics to accompany the Governor's Address to the Legislative Council on the introduction of the budget for 1921".

³⁵³ In the early of 1917, when the "War Tax Bill" was read the first time, it was received with much opposition. In a situation where the European community was "sitting on the fence", one section of the Oriental community expressed fear that if the word "income" was mentioned, the tax would remain for ever and ever. *ANM/KL SS 17* : LCP, 8th January, 1917, p. B13, "War Duties Bill". In 1920, their fear became a reality as the Government's attempt to introduce income tax since 1908 was realized. See also *AMN/KL SS 13*, *Income Tax Ordinance*, 1922, "An Ordinance for imposing a Tax on Income", pp. 5-39.

³⁵⁴ *ANM/KL SS 17* : LCP, 1922, "Income Tax Ordinance, 1922: Paper to be laid before the Legislative Council, vide Notification No. 476 in *Government Gazette* No.26 of 24th March, 1922".

³⁵⁵ *ANM/KL SS 17* : LCP, 19th December, 1921, pp. B277-B278. In this proposal, the Attorney General suggested slight additional taxation on higher incomes. At the same time, fearing opposition especially from unofficial members, as usual, he used a *certificate of emergency* signed by the Governor to force the bill to the Select Committee.

³⁵⁶ *ANM/KL SS 17* : LCP, 29th October, 1923, pp. B175, "Supply Bill for 1924". The abandonment of the income tax was welcomed by W. Lowther Kemp, unofficial council member, who remarked, "...I regard the broadening of the basis of taxation as one of the greatest problems before this Colony and I have never ceased to regret the abandonment of the income tax for that reason. Incidentally, I would remark that the tax would never have been abandoned had the government been content to apply its

Two important changes were instituted under the *Income Tax Ordinance, 1921*. Firstly, the income of any company, association or persons whose principal place of business was not situated in the Colony, and secondly, whose business in the Colony was the sale of rubber, copra or other agricultural produce or of metals or minerals produced or won by it or him outside the Colony, were exempted under Section 7 of *Income Tax Ordinance, 1920*. Although these exemptions were not provided for under the War Tax Ordinances, it had been War Tax Department practice to exempt such income at the direction of the government.³⁵⁷ Under the provision of *Income Tax Ordinance, 1921*, firms, associations, and persons who paid income tax in other British territories as well in the SS were subject to Double Taxation treatment.³⁵⁸ However, the Select Committee abandoned the second proposal to tax copra and other agricultural products sold in the SS³⁵⁹ because agricultural products, especially rubber, and other metals, such as tin, which had been the most important commodities imported from the Federated Malay States, were also subject to heavy export duties by the government of the Federated Malay States.

By July, 1921, the end of the war led to decreases in demand for tin and rubber.³⁶⁰ The general trade depression, especially in tin and rubber, which ruled

taxation machinery moderately and not excessively. It was the withdrawal from the community of this large sum in excess of necessary taxation that led to the expression of public opinion. Unfortunately that expression of public opinion was directed into the wrong channels. It was directed against one tax instead against excessive taxation as a whole". See also *ANM/KL SS 17* : LCP, 31st October, 1927, p. B142, "Supply Bill for 1928"; *ANM/KL, P/HDN 1, 1947*, p. 1.

³⁵⁷ *ANM/KL SS 17* : LCP, 13th, December, 1920, pp.

³⁵⁸ *ANM/KL SS 17* : LCP, 23th May, 1921, pp. B13-B14. The motion was agreed to and the bill was read a third time and passed after few amendments were made.

³⁵⁹ *ANM/KL SS 17* : LCP, 23th May, 1921, pp. B13-B14. During this meeting, W. Lowther Kemp's suggestion, which received full support presumably from the unofficial members of the Council, that two clear conditions should precede any increase in the rate of taxation. Firstly, a similar tax should be imposed in the Federated Malay States; secondly, unofficial members of the Council should be perfectly satisfied after investigation that the incidence of the tax was equitably distributed over the whole population.

³⁶⁰ *ANM/KL SS 17* : LCP, 4th July, 1921, p. B125.

throughout the later part of 1920, had an appreciable effect on income returns. However, owing to income tax for the year 1921 being based, in very large cases, on returns of Companies and Associations for the financial year before the slump, the effect of this depression was not felt in terms of income collected for 1921 or for 1922. Furthermore, owing to the widening of the income tax net under the provisions of the *Income Tax Ordinance, 1921*, the Government's anticipation was that decreases in revenue in 1921 due to trade depression would be offset by local taxation of the profits of Companies and Associations, which formerly paid no tax in the Colony.³⁶¹ However, by the end of 1922, revenue generated through the Income Tax Ordinances was less than anticipated and continued to fall steadily. The statistics show that at the same time economic disparities between Europeans, Chinese, and Malays increased.³⁶²

Practically speaking, even though no further reference was made to income tax until 1940,³⁶³ a series of debates which took place in 1926 and 1927 indicated that the government had a lingering affection for income tax as a ultimate replacement for the

³⁶¹ *ANM/KL SS 17* : LCP, 31st October, 1921, p. C258, "Address of His Excellency the Governor to members of Legislative Council".

³⁶² *ANM/KL, P/HDN 1*, 1947, p. 35. Table shows payments of tax by individual taxpayers by races and corporation in the SS:

Year of Assessment	1920	1921	1922
Income Tax Assessments (\$) Collected	6309697.23	5670815.34	3429391.24

Most of the native Malays, who lived in rural areas with almost without basic amenities, were still involved in small scale subsistence agriculture, derived gross income less than minimum taxable income. However, it could not be ruled out that the Malays might be ignorance of the newly introduced income tax provisions due to the location of their village from town centres and the lack of investigation conducted by the Income Tax Department. Major percentage of this figure of \$113,180.24 may come from Arab traders and probably some of the taxpayers were from Royal births and Malay chiefs.

³⁶³ *ANM/KL SS 17* : LCP, 24th August, 1925, pp. B136-B137. Again in 1925, the government pledged that they would not reconsider imposing income tax despite the creation of the Opium Revenue Replacement Reserve Fund to prepare the inevitable diminution of opium revenue as a result of the full adoption of the resolutions passed at the Hague Convention. At this juncture, the fiscal policy could be described as to "milk the existing cow a little more frequently".

anticipated diminution of opium revenue³⁶⁴ after the formation of the *Opium Revenue Replacement Reserve Fund* as a result of subsequent resolutions passed at the Hague Convention, engagement of the Peace Treaty of Versailles and the provisions of the International Opium Convention signed at Geneva on the 19th February, 1925.³⁶⁵

By late 1929, Governor Sir Hugh Clifford's statement that "fresh taxation is unnecessary" was cautiously welcomed by the Council members. It is interesting to point out that close analysis of the growth of the Colony's surplus balance over the previous twenty years could only point to a conclusion that excessive scales of taxation had been enforced resulting in the remarkable accumulation of this surplus. At this juncture, some members of Council believed that this surplus should be reduced and that there should be some remission of those taxes which directly affected the poorer classes.³⁶⁶ Surprisingly, with these enormous surpluses, the deficit conservatively estimated in the *Supply Bill of 1930* seemed like a plot purposely drawn by the government to justify its argument that a new tax was necessary, justified by the pretext

³⁶⁴ *ANM/KL SS 17* : LCP, 31st October, 1927, p. B147; 10th October, 1927, pp. C248-C251, "Address by the Governor to members of the Legislative Council"; 29th October, 1928, p. B138, "Supply Bill for 1929". For the first time, there was a deficit in the financial year 1925, 1927 and 1928, estimated at \$3,000,000 in 1929. It was projected that after the Opium Revenue Replacement Reserve Fund has been all used up, there would be a significant deficit of \$20,000,000 which make up of \$15 millions to recoup the Fund, \$2 millions for the Preventive Service, and \$ 3 millions for increased Military Contribution.

³⁶⁵ *ANM/KL SS 17* : LCP, 13th December, 1926, p. B189.

³⁶⁶ *ANM/KL SS 17* : LCP, 28th October, 1929, p. B151. The balance sheet of the Colony shows an excess of assets over liabilities:

Year	Assets - Liabilities (\$)
1906	2250000
1913	12809000
1924	64750000
1929	72,500,000 (estimate)

If the excess figures of 1929 be added to the Opium Revenue Replacement Reserve Fund of \$44,500,000 and Currency Guarantee Fund at \$21,250,000, the surplus would be a prodigious sum of \$138,000,000 which clearly suggested that, having able to amass such enormous wealth of a liquid nature, after having paid for both its ordinary and very extraordinary capital expenditure during a period of 23 years, the system of taxation had been excessively imposed.

of the danger of the anticipated diminution in the near future of opium revenue, whilst the government had every intention to legally extend the collection of opium revenue to the maximum 15 years.³⁶⁷

³⁶⁷ *ANM/KL SS 17* : LCP, 28th September, 1931, Vol. I, p. B111. In 1931, a policy to suppress completely the use of opium within a period of not more than 15 years from a fixed date, which had not been determined in late 1931, was declared in Bangkok by the League of Nations.

Tax Policy: World-Wide Trade Depression Era (1930-1939)

By September, 1930, the world-wide trade depression started to grip the Colony and the Federated Malay States's economies with exceptional severity because of the sharp decline in the prices of rubber and tin. Rubber and tin had hitherto been the principal products of Malaya and the depressed state of these industries was, therefore, inevitably reflected in the revenues of the Malayan Governments.³⁶⁸ In a way, the prevailing economic situation too had an indirect effect on the SS's revenue. During the tabling of the Supply Bill for 1931, the SS government estimated that a deficit of \$10 million would be anticipated at the end of 1930. The increase in deficit accounted for almost entirely by the drop in the revenue from excise duties, from opium and liquor.³⁶⁹ The diminished revenue forecasts for 1930 and 1931 were attributable to the general trade depression, but examining the four normal years from 1926 to 1929 inclusive, the financial position was considered satisfactory except in relation to the opium revenue.³⁷⁰

³⁶⁸ *ANM/KL SS 17* : LCP, 29th September, 1930, pp. B118-B119.

Year	Overseas Imports of British Malaya (\$)	Overseas Exports (\$)
1929	103000000	108000000
First half of 1930	4500000	43000000

Total volume of trade in the Colony diminished from the record of £264 millions in 1926 to £176 millions in the 1930, whilst the prices of major commodities sold in Malaya:

Financial Year	1910	1920	1925	1930
Rubber	12s. 9d. a pound		4s. 8d. a pound	3 $\frac{7}{8}$ pence a pound
Tin		£423.10s a ton		£131. 6s. 5d. a ton

In view of the depressed state of these principal commodities, the Governor initiated an economic restructuring to broaden the tax base with focus on extending rice cultivation and the production of other food-stuffs in Malaya.

³⁶⁹ *ANM/KL SS 17* : LCP, 29th September, 1930, p. B120; 31st August, 1931, Vol. I, pp. B111, B114-B115. The Budget meetings of 1930 and 1931 had taken place under circumstances of world-wide trade depression.

³⁷⁰ *ANM/KL SS 17* : LCP, 29th September, 1930, p. B147. With the more effective prevention of opium smuggling and the revival of world trade, the government expected that after 1930, the revenues generated would be back to normal again.

For the financial year of 1931, total net deficit was estimated at an alarming figure of \$15,613,207. By October, 1931, the government had embarked on special programmes in an attempt to balance its budget. Surprisingly, when a Retrenchment Committee was appointed in October 1931 to report on cutting down some of the extravagant and non-recurrent expenditures, tax rates were instead increased under the provisions of Estate Duties, Stamp Duties and Petroleum Tax.³⁷¹ The majority of the unofficial members in the Legislative Council objected to the sudden appearance of these new taxes in the legislative programme. They suggested that before considering any increase in taxation, the government should firstly look into the retrenchment of annual recurrent and extraordinary expenditure, increase postage or stamp duties in other directions, increase duties on liquor and tobacco, and partially if not wholly credit the general revenue with the principal and interest of Opium Revenue Replacement Reserve Fund and the Currency Guarantee Fund.³⁷² The government was adamant to most of the suggestions, but partially adopted the recommendations of the Retrenchment Committee, which suggested, amongst other things, the undertaking of public works in times of recession rather in times of prosperity (on the score of economy, and to take advantage of the cessation of outside requirements for labour) the government insisted that only the interest from the Opium Revenue Replacement Reserve Fund be credited to the general revenue account.³⁷³

In spite of the world-wide “economic blizzard”, the end of the fiscal year 1931 saw the Colony in a strong financial position with a balanced budget, large reserves and

³⁷¹ *ANM/KL SS 17* : LCP, 12th October, 1931, Vol. I, pp. B141-B146; 1931, Vol. II, pp. C385-C387, “Report of the Committee appointed to scrutinise the whole of the Estimates of the Colony in order to effect any possible economies, dated 18th September, 1931”.

³⁷² *ANM/KL SS 17* : LCP, 12th October, 1931, Vol. I, pp. B144-B153, B156-B159. For history of the Currency Guarantee Fund, see *ANM/KL SS 17* : LCP, 2nd October, 1933, pp. B119-B120.

³⁷³ *ANM/KL SS 17* : LCP, 12th October, 1931, Vol. I, pp. B157-B163, “Debate on the Budget Resolution”; 26th September, 1932, pp. C349-C366. For report of the SS Retrenchment Committee, see *ANM/KL SS 17* : LCP, 26th September, 1932, pp. C417-C476; 2nd October, 1933, pp. B136-B137.

no public debt.³⁷⁴ However, due to the grave general outlook, the government embarked on broadening the foundations of the economic structure.³⁷⁵ At the same time, attempts to explore and extend the application of taxation were frequently opposed by most of the unofficial members of the Council.³⁷⁶ The government saw this kind of opposition as a golden opportunity to experiment with a new method to combat these this criticism. The government claimed that delays in putting the new laws into effect resulting from opposition had led to consequent loss of revenue. Subsequently, in January, 1932, the government embarked on a daring counter-measure to introduce a Public Revenue Protection Bill targeted at the three Ordinances on the Statute Book, namely the Liquors Revenue Ordinance, the Tobacco Duties Ordinance and the Petroleum Revenue Ordinance. Even though each of these ordinances contained a provision to the effect that duty might be varied by a resolution of the Council, the power vested in the proposed Public Revenue Protection Ordinance provided a way to immediately enforce the collection of revenues until the Council resolved through resolution to do otherwise.³⁷⁷

³⁷⁴ *ANM/KL SS 17* : LCP, 25th October, 1933, p. B169. In October, the government voluntarily disclosed that the general belief that the Colony has no public debt was incorrect. The Colony had a public debt of over \$154 millions for which the credit of the Colony was pledged by law. Practically, the whole of this money was re-lent to the Harbour Boards, the Municipalities, the Federated Malay States Government and the Imperial Government.

³⁷⁵ *ANM/KL SS 17* : LCP, 26th September, 1932, pp. B117, B121-B122, B126-B127. Address of the Governor at a meeting of the Legislative Council, 29th September, 1930. At this juncture, the government was urged to adopt the recommendations of the Opium Revenue Replacement and Taxation Committee, which sat in 1928 at a time of comparative economic peace. This recommendation, which was deemed a carefully thought out policy by some of the unofficial members, suggested that necessary public works should be carried out in bad times when the cost of materials was low and labour was plentiful. However, the government contended that it was justified and perfectly right in depending upon money to meet its extraordinary expenditure from surplus balances.

³⁷⁶ *ANM/KL SS 17* : LCP, 26th January, 1932, pp. B6-B7. The Attorney-General remarked, "It seems obvious, therefore, that the present system is seriously defective. The unofficial members of this Council, not necessarily because they disagree with them, but because they do not have an opportunity to consider them. Unless it is based on proper consideration, such unanimous unofficial opposition is almost certain to create an entirely false impression in the minds of the general public who do not properly understand the position".

³⁷⁷ *ANM/KL SS 17* : LCP, 26th January, 1932, pp. B6-B8. The Public Revenue Protection Bill was an adaptation from the Ceylon Ordinance which had been in force since 1921. Both Bills, in their general principles, but subject to necessary modifications, were based on the *Provisional Collection of Taxes Act, 1913* of the United Kingdom.

In spite of the powerful provisions vested in the *Certificate of Emergency*³⁷⁸ and although on numerous occasions bills were tabled in the Council on a very short notice, and were referred to the Select Committee even before the third reading of many bills were completed, the government felt that the *Public Revenue Protection Bill* was necessary. In a nutshell, the bill provided that when a bill or a resolution authorising the imposition of a new import or export duty, or the alteration of an existing import or export duty, had been approved in the Executive Council (consisting of three unofficial members), for introduction into the Legislative Council, the Governor might thereupon authorise the Superintendent of Government Monopolies or such other officer as he might nominate to collect the duty set forth in the bill or resolution. In effect, the bill thus authorised the immediate collection of the new duty and prevented any possibility of “dumping” pending consideration of the bill or resolution by the Legislative Council. In any event, if the duty eventually imposed by the Council was less than the duty imposed under the temporary order of the Governor, refund would be instituted under Clause 4 of the bill.³⁷⁹

During the second session of 4th April, 1932, further opposition was expressed by some of the Council members and the general public. The public believed that a taxation bill must, if revenues were not to be lost, be placed before the Legislative Council and passed on a unanimous unofficial vote. This principal was in conformity with the essence of Article XII of the Instruction passed under the Royal Sign Manual and Signet to the Governor of the Straits Settlements. Despite all the attempts to delay the bill, it was referred to Select Committee and there it was passed as expected without amendment. Only then it was tabled in the Council before being finally read the third

³⁷⁸In the Federated Malay States, it was called “Certificate of Urgency”. Both certificates vested in the Governor of the Straits Settlements or the High Commissioner of the Federated Malay States provided the avenue for the government to enforce new regulations immediately upon publication in Government Gazette unless the Council resolved to do otherwise.

³⁷⁹*ANM/KL SS 17* : LCP, 26th January, 1932, pp. B7-B8. Under the Ceylon Ordinance, the power to approve a bill or resolution imposing or altering duties was vested in the Governor alone and he need consult no one, whereas under this bill, which was adapted from the Ceylon Ordinance, the power to impose or amend duties was vested in the Executive Council.

time and passed.³⁸⁰

By the end of 1932, during the tabling of the Supply Bill for 1933, the Colonial Secretary informed the Council that despite a windfall of \$10 million from the Currency Guarantee Fund, the financial position of the Colony could be regarded, considering the world-wide depression and the inevitable effect of that depression on the revenues, as not unsatisfactory. However, by careful management, the government was confident of its ability to frame a recurrent balanced budget, provided that the government could impose additional taxation and insist on stern measures of retrenchment as suggested by the Retrenchment Committee.³⁸¹

Recession still gripped the economies of the Colony and the Malay Peninsula.³⁸² The improvement of commodity prices during the last three months of 1933 proved nothing more than 'a foam-flake on a wave of the stormy sea'. For these reasons, the budget for 1934 for the Colony was drawn up strictly on economic lines of the 1933 Estimates³⁸³ using a *Certificate of Emergency*, keeping the recently passed *Public Revenue Protection Bill* at bay. For the first time in history, revenue from quit rent was being considered to equalise the balance sheet of the government even though in the past it had contributed comparatively little to the revenues. At this meeting of 4th December, 1933, the *Rubber Taxation Committee Report of 1931* suggested that \$1 per acre should be the limit of quit rent. In the case of tin, the government had regarded favourably the

³⁸⁰ *ANM/KL SS 17* : LCP, 4th April, 1932, pp. B38-B39; 26th August, 1940, p. 89. In late of 1940, the bill was amended again and read the third time and passed as the Public Revenue Protection (Amendment) Bill.

³⁸¹ *ANM/KL SS 17* : LCP, 26th September, 1932, pp. B102-B111. The effect of the slump during 1931 and 1932 was quite devastating to the labour force. There was a net loss by migration of over 300,000 of the Colony's Chinese and Indian population.

³⁸² *ANM/KL SS 17* : LCP, 1933, Appendix, pp. C346-C247. Principal features affecting general trade were the American banking crisis in April, 1933, the World Economic Conference in June, 1933, and latterly a tendency to a rise in commodity prices due to the inflationary policy adopted by the United States of America.

³⁸³ *ANM/KL SS 17* : LCP, 25th October, 1933, p. B170; LCP, 4th December, 1933, pp. B203-B213.

principle that a graduated export tax should in prosperous times be allowed to accumulate a surplus fund to be used for equalising the revenue during recession years. The same principle applied to rubber.

At this juncture, due to the unfair tax treatment for the rubber industry, the government started contemplating the imposition of an equitable basis of taxation through an *ad valorem* export duty on the produce of the land with a nominal scale of quit rent, even though this was sternly criticised by the Rubber Growers' Association.³⁸⁴

Although the Rubber Growers' Association advocated a permanent revision of the present scale of quit rent on agricultural land and the retention of the maximum rate for such land for 1934 at \$2 per acre, the government instead proposed an increase to \$3 per acre.³⁸⁵

By the end of 1934, the financial health of the Colony was in a sound position due to the windfall from the Currency Guarantee Fund.³⁸⁶ Out of \$31 million revenue, \$8.5 million was anticipated from opium revenue whilst the Opium Revenue Replacement Reserve Fund stood at an estimated \$58.8 million at the end of 1934. With the closing of the register of opium smokers at the end of 1934, the diminution of revenue from opium seemed to be imminent. It was evident that the cash supplement from the Opium Revenue Replacement Reserve Fund could not sustain the Colony's

³⁸⁴ *ANM/KL SS 17* : LCP, 4th December, 1933, p. B211. In Malaya, where roughly $\frac{3}{4}$ of the acreage planted with rubber, rents vary through a wide range purely nominal rentals up to \$4 per acre. At \$4 per acre it was thought to be over-taxed, whilst $\frac{1}{8}$ th was on a low rental scale and deemed to be fairly taxed. However, the remaining $\frac{1}{8}$ th with concessions granted on a rent free or nominal basis was deemed under-taxed.

³⁸⁵ *ANM/KL SS 17* : LCP, 4th December, 1933, p. B212-B213. The waiver of quit rent in excess of \$2 had operated for only a brief period of 2 years, and Tan Cheng Lock argued that it was too soon to withdraw the concession even partially because the rubber industry was still in critical situation due to the effect of the slump.

³⁸⁶ *ANM/KL SS 17* : LCP, 24th September, 1934, pp. B127, B130. Due to the largely successful restrictions on the export of rubber and tin, prosperity was slowly returning to Malaya.

needs forever, whilst the Secretary openly contemplated other sources of taxation.³⁸⁷ At this juncture, E. Newbold, unofficial member of Legislative Council reminded the government of its promise in 1931 to reduce taxation on petrol and liquors once the findings of the Retrenchment Committee had been justified. He convincingly argued that remission of taxes helped trade and this assistance to trade in turn resulted in increased revenue. As such, he added, it was timely to reduce the extra taxes imposed during the recent slump. As anticipated, the government which had never reduced taxation in the past, remained adamant on the issue.³⁸⁸

Until the third quarter of 1935, the rubber and tin industries were still struggling to remain viable. Rubber and tin restriction schemes appeared to have failed in their attempt to stabilise the prices of the commodities. At the same time, the pineapple industry had received considerable attention. Total revenue collected under principal sources, opium, liquors, tobacco and petroleum only equaled that of the pre-slump years of 1929 and 1930. Increased taxation followed by a higher level of spending appeared to lead to more financial chaos. The Colony's trade had no margin, and difficulties in trading were growing from year to year.³⁸⁹

By 1938, the budget deficit of the Colony had widened to \$4 million despite the wind-fall of over \$33 million credited from the Currency Guarantee Fund. In 1939, the problem became more serious with a deficit of \$12 million, whilst the years 1940 and

³⁸⁷ *ANM/KL SS 17* : LCP, 24th September, 1934, pp. B119-B121, B131; 24th September, 1934, Vol. II, p. C461. By the end of 1934, \$2.3 millions of interest generated by the Opium Revenue Replacement Reserve Fund was credited to the general revenue. In the event that opium revenue was greatly diminished, the money spent at that time on opium would still be in the Colony. The government confident that it was merely a question of ways and means of getting the necessary taxes into its coffers. Under the heading "Interest", the government could draw big slice of revenue by way of interest from the surplus. In addition, interest from the Opium Revenue Replacement Reserve Fund had been authorised by the Secretary of State to be credited to the general revenue account until the end of 1935. It should be noted that the system of administration in the SS and the Federated Malay States was such that many executive decisions were still dictated by the Home Government.

³⁸⁸ *ANM/KL SS 17* : LCP, 24th September, 1934, pp. B124, B127.

³⁸⁹ *ANM/KL SS 17*: LCP, 28th October, 1935, pp. B64-B65, "Address of the Governor of the Straits Settlements", p. B75.

1941 showed an estimated deficit of \$17.7 million and \$11 million respectively.³⁹⁰

³⁹⁰ *ANM/KL SS 27*: LCP, 14th October, 1940, p. 133.

The Formative Period: World War II Tax Policy (1939-1945)

In the summer of 1939, World War II erupted in Europe. Shortly after the outbreak of the war, the Government of the Straits Settlements and the Federated Malay States appointed a Joint Committee to consider the question of contributions to the Imperial Government and the raising of such contributions by means of war taxation. The government, as in the past, advocated that it was the most equitable form of taxation as reflected in the earlier days of income tax in the United Kingdom when successive ministers were of two minds as to the justification for such a measure in peace time.³⁹¹

News of re-introduction of taxation on income had aroused public fear and provoked widespread public agitation. The trauma of the consequences of the War Tax imposed for the three years 1917 to 1919 still lingered in the minds of most people in the Straits Settlements and the Federated Malay States. As to the fear that the tax would become a permanent feature in the fiscal policy, the Financial Secretary assured the public that, “....the bill provides for the imposition of the tax for one year only and it will lapse unless it is re-enacted by this Council.....the proceeds are to be used towards defraying expenses incurred in the prosecution of the present war.....I maintain that these two safeguards are sufficient guarantee that there is no intention on the part of the government to pull a fast one over the taxpayer”. As regards the possible flight of capital, the government contended that the imposition of previous tax on income did not noticeably drive capital away.³⁹² During the enforcement of the previous three years of War Taxes, many taxpayers, especially Chinese in small businesses, were subject to investigation by the Income Tax Department for probable tax evasions. Most of the objections were focussed on the fear of inquisition and disclosure of commercial secrets. It was argued that the staff of the Income Tax Department had focussed more on small businesses rather the established ones. It should be noted that most of the Chinese and

³⁹¹ *ANM/KL SS 27*: LCP, 20th January, 1941, pp. 29-30, 32 “War Tax Bill”; 2nd April, 1940, p. 34; *CO 576/73*: PFC, 30th January, 1941, “The War Taxation Bill”, pp. 8-33.

³⁹² *ANM/KL SS 27*: LCP, 14th October, 1940, pp. 159-160 ; 20th January, 1941, p. 30, “War Tax Bill”

Indian traders were ignorant of the English accounting system. Accounts were kept in their native languages in a very simple form with approximate stock-taking at the end of the year and maintained by persons with little knowledge in simple double-entry book-keeping and numerous erasures were abundant. Income Tax Department, noticing these numerous erasures, resorted to threats against the proprietors of these businesses on the grounds that these erasures indicated an intention by the proprietors to falsify their accounts with the object of tax evasion. As a result, these Chinese merchants because of their ignorance and fear of prosecution, naturally resorted to bribery in order to put right their accounts by the income tax staff thus avoiding prosecution. It was suggested that to prevent this kind of unwanted scenario, the names of persons constituting the panel of assessors should be disclosed to the public so that genuine complaints as to unfair treatment or unnecessary inquisition by the staff could be brought to the notice of the Collector through a Tax Assessor. Despite this, the government insisted that objections to the imposition of tax on income were mere expressions of sentiment against any increase in any form of taxes. Amid this confusion, a bold statement by the government“....that why the government has never dropped the idea of direct taxation...” suggests that the fiscal policy appeared to contradict with the pledge given earlier that the War Taxes would be repealed once the war was over.³⁹³

As expected, based on previous experience of War Tax and Duties imposed during World War I, following these recommendations of the Joint Taxation Committee, certain existing duties were increased and other new duties and taxes were imposed, and the whole of the gross proceeds were remitted periodically to London as a gift to the Imperial Government, including the annual 20% of the gross revenue towards defence.³⁹⁴ Consequently, the *War Duties Bill, 1940*,³⁹⁵ following the

³⁹³ ANM/KL SS 27: LCP, 20th January, 1941, pp. 30-31, 32-33, “War Tax Bill” ; 3rd February, 1941, pp. 56-57; CO 576/73: PFC, 30th January, 1941, “The War Taxation Bill”, pp. 8-33.

³⁹⁴ ANM/KL SS 27: LCP, 20th January, 1941, p. 27, “War Tax Bill”.

³⁹⁵ ANM/KL SS 27: LCP, 2nd April, 1940, p. 26. The War Duties Bill was expected to generate \$2,450,000 per annum, whilst a proposed entertainment duty was estimated to yield \$300,000 per annum. In addition there would also be an additional revenue of \$2,000,000 a year from the duties on liquor and

recommendations of the Joint War Taxation Committee, tabled at the Legislative Council on 2nd April, 1940, was designed to produce by new or additional taxation a sum of money to be used as a contribution to Imperial War purposes which would be in force for only a year, subject to renewal.³⁹⁶ At this juncture, the same bill which had been tabled at the Federal Council in the Federated Malay States was passed without any hitch. In a nutshell, the extended and new scope of taxation consisted of :³⁹⁷

1. export duty on rubber of 2.5% *ad valorem*,
2. import duties on fireworks, playing cards and mineral waters,
3. excise duties on mineral waters and playing cards manufactured locally,
4. a new scale of estate duties, based on that in the United Kingdom,
5. increased stamp duties on certain instruments of transactions,
6. an additional duty on totalisator betting and sweepstakes,
7. a duty on the nominal share capital of new companies, and
8. an additional tax on private motor cars [Road Tax & Petroleum Tax].

As a result of repeated suggestions in the Press for a local loan as an alternative to war tax on incomes, the next step taken by both Governments was the appointment of a second Joint Committee to consider whether the Colony and Malaya should raise a loan, the proceeds of which would be presented to the Imperial Government as a further contribution towards the prosecution of the war; and if so, to suggest what measures

tobacco. In total, estimated revenue would be \$4.75 millions a year.

³⁹⁶ *ANM/KL SS 27*: LCP, 2nd April, 1940, p. 26. However, the recommendations proposed no export duty on tin because of the very small yield that would have been produced.

³⁹⁷ *ANM/KL SS 27*: LCP, 2nd April, 1940, pp. 26, 29-32; 3rd February, 1941, pp. 56-57. The other provisions of the bill provided machinery for the collection of the taxation and so far as they were concerned import and excise were based upon the provisions of the Liquors Revenue Ordinance, as in the Colony there was no customs legislation, except in the Federated Malay States. In addition, the War Taxation Committee adopted the scale used in England for the duty on playing cards. In England, there was excise duty on playing cards and an import duty which was about double the excise duty, and the rates which were suggested by the War Taxation Committee were 20 cents import duty and 10 cents excise duty. The *Entertainment Duty Bill, 1940* followed very closely the *Finance (New Duties) Act, 1916* of the United Kingdom which had been in force in England for many years after the end of the war. Estate duty was trebled to a maximum scale of 60%. All these new rates were valid for one year only subject to re-enactment by the Council.

should be taken to guarantee the means of servicing the loan.³⁹⁸ This committee recommended a \$25,000,000 loan at 3% per annum via the issue of *War Savings Certificates*. To service the loan and to provide for the redemption of the *War Saving Certificates*, the Committee recommended a tax on incomes which caught the public by surprise.³⁹⁹ In its initial stage, it was suggested that a Malayan loan of \$100 million with interest of 3% amounting to \$3.7 million per annum be repaid in 12 years so that it would not bear too hardly on prosperity. The loan would be borne by the administrations in what were known as the “Blackett Ratios”. On the other hand, in the Federated Malay States, some suggested that the loan be redeemed through war tax on incomes.⁴⁰⁰

By October, 1940, as a result of massive generous contributions to the Imperial Government of over \$62 million for the past three years, the Government of the Straits Settlements realised that the Colony could not survive by going on spending at the current rate without providing fresh sources of revenue or utilising available reserves.⁴⁰¹ The War Taxes hitherto imposed had produced about \$3 million and as all the proceeds

³⁹⁸It worth noting that on top all these so-called “voluntary gifts”, the Defence Contribution of 20% of the total revenue of the Colony and the Federated Malay States was still in force.

³⁹⁹*ANM/KL SS 27*: LCP, 2nd April, 1940, pp. 32-33; LCP, 20th January, 1941, p. 27, “War Tax Bill”. Until January, 1941, War Saving Certificates sold were valued at over \$2.25 millions and this money was also remitted to the Imperial Government.

⁴⁰⁰*ANM/KL SS 27*: LCP, 2nd April, 1940, pp. 32-34. The “Blackett Ratios” corresponded to a percentage contribution of 37% each for the Straits Settlements and the Federated Malay States, and 26% for the UFMS. In the United Kingdom, a £300 millions loan had been floated which was complementary to the revenue derived from the already heavy taxation. By October, 1940, \$25 millions of the War Loan had been remitted as a gift to the Imperial Government. In addition, a customary gift of £1 million was also remitted in early of 1940. The general public also contributed its share by means of contributions from individuals and through the media of the Malaya Patriotic Fund and the War Fund. By October, 1940, a total of over \$1,980,000 and \$4,230,000 respectively was remitted. Public bodies such as the Singapore Municipality generously contributed \$1 million whilst the Penang Municipality contributed \$600,000. In addition, the Singapore Harbour Board contributed two launches to the Imperial Navy. See *ANM/KL SS 27*: LCP, 26th August, 1940, pp. 122-123, “Address by His Excellency the Officer Administering the Government of the Straits Settlements”.

⁴⁰¹*ANM/KL SS 27*: LCP, 14th October, 1940, p. 133. By October, 1940, the Financial Secretary proudly announced that total contribution for the past three years to the Imperial Government, including the proceeds of the local loan and the normal annual defence contributions, amounted to over \$62 million.

had been generously remitted to the Imperial Government, the additional taxes did not help bridge the gap between revenue and expenditure. At this juncture, every form of taxation such as customs or excise duties, taxes on incomes, property or profits, licences or stamp duties, premium bonds or lotteries, taxes on circulation, turn-over, purchases or sales, had been carefully studied. The government believed, given discretion and a sympathetic understanding of the problems that a system of direct taxation suitable for war purposes could be successfully administered without serious inconvenience to the honest taxpayer.⁴⁰²

In order to determine the best method of implementing this recommendation, in 1940, following a broadcast by the High Commissioner made earlier that year, a third Joint Committee was appointed on the 20th September, 1940⁴⁰³ to study problems connected with income tax which were common to both administrations, and to formulate proposals.⁴⁰⁴ The committee, in its search for a simplicity which would be appropriate to a temporary tax for war purposes, examined the whole series of the Colony's War Tax Ordinances from 1917 to 1922 which had been framed to meet the same requirement, United Kingdom and Ceylon practice, and the Hongkong War Revenue Ordinance. The Joint Committee in the course of its deliberations was advised by the government that a tax on incomes would receive no unofficial support and naturally it spent no time in discussing such a measure. This advice would appear to show that the government at this juncture had already framed their views favouring the imposition of income tax. Warned by the fate which had befallen the Hongkong Income Tax Bill, the committee considered it prudent to look carefully into the

⁴⁰² *ANM/KL SS 27*: LCP, 14th October, 1940, pp. 134-135. By the end of 1940, financial problem appeared to be in satisfactory situation especially expenditure on war departments and on defence measures. A basis of apportionment of expenditure had been agreed upon by the Malayan Administration--the Straits Settlements bear 45%, the Federated Malay States 40% whilst Johore 10% and Kedah 5%.

⁴⁰³ *ANM/KL SS 27*: LCP, 6th November, 1940, pp. 180-181; *ANM/KL SS 27*: LCP, 3rd February, 1941, p. 65.

⁴⁰⁴ *ANM/KL, P/HDN 1, 1947*, p. 2.

Hongkong War Revenue Ordinance which had been accepted in its place. Finally the Committee rejected this Ordinance as a model. On the other hand, the Ceylon draft, which was deemed a strong and healthy child at that time, was in the circumstances as the committee understood them unlikely to receive support.⁴⁰⁵ After very careful deliberation, the Joint Committee reported in favour of legislation on the lines of the earlier Straits Settlements War Tax, and two Bills were drafted, one for the Colony and one for the Federated Malay States modeled on the Straits Settlements *War Tax Ordinance No. 3 of 1919*.⁴⁰⁶

It appears that bitter memories of consequences of direct taxation in the past were common among the public, particularly in the Straits Settlements. As a result, the re-enactment of the War Tax Ordinance in 1941 aroused public agitation and was extensively reported in the Press. Despite vociferous public opinion, in the form of numerous representations made by responsible public bodies and associations as well by private individuals who had made it crystal clear that they had not agreed, the government appeared to be adamant and unresponsive to the issues. Fear was further aggravated by news that the government had received cabled instructions from the Secretary of State for the Colonies to introduce a scale of Supertax on individual incomes and/or a scale for Excess Profits Tax on profits of companies and partnerships

⁴⁰⁵ *ANM/KL SS 27*: LCP, 20th January, 1941, p. 27, "War Tax Bill". The objectives of the Committee was best described in the Committee's words, "These Ordinances were designed to impose a simple and straight forward tax upon profits and incomes in order to produce revenue for war purposes at a minimum cost and as fairly as the circumstances permitted". See also *ANM/KL SS 27*: LCP, 3rd February, 1941, p. 65, "War Tax Bill".

⁴⁰⁶ *ANM/KL SS 27*: LCP, 20th January, 1941, p. 27, "War Tax Bill"; 2nd April, 1940, p. 27; *P/HDN I*, 1947, p. 2. This new Ordinance was the first to appreciate the special position of those producers of rubber and tin who were paying additional war tax on their products. Secondly, the Ordinance exempted from local taxation all income on which tax had been paid elsewhere in the British Empire. The first fact was in response from the United Planters Association of Malaya which requested that additional duty should not be levied upon producers who were subsidiary companies incorporated in Malaya of parent companies in the United Kingdom. Under the new Ordinance, a subsidiary company registered in the Colony was not liable to income tax whilst the only income which was liable to income tax derived by a subsidiary company was income remitted to the United Kingdom in the form of dividends to people resident there.

some time after this War Tax Bill had been approved by the Council.⁴⁰⁷

F.D. Biseeker, an unofficial member of Council who felt that the Ordinance was so incomplete and irrelevant, noted that it taxed only the few and left out of consideration a large section of the population who were supposedly liable to tax.⁴⁰⁸ It was true to a certain extent that the Ordinance had left out important taxable entities, such as partnerships and that there were other omissions such as lack of allowances for married men with families and failure to provide adequate allowances for wear and tear and obsolescence of plant and machinery for enterprises of an industrial nature. The government, however, had its reasons for this in accordance with the recommendations of the Joint Taxation Committee.⁴⁰⁹ N.M. Hashim, an unofficial member, supported F.D. Biseeker's arguments, adding that despite the progress of the war at that time, evidence from trade returns and other evidence showed that the rich were already multiplying their incomes and profits. In addition, in spite of soaring prices of building materials, buildings of several storeys were springing up all over the country, particularly in business centres. This indicated accretion of money, or stagnation of accumulated wealth, and also a demand for more office spaces for business. This was deemed wise to extend the scope of direct taxation. However, despite these convincing representations, the major segments of the public proposed a loan rather than a tax on

⁴⁰⁷ *ANM/KL SS 27*: LCP, 3rd February, 1941, pp. 50-56, 68-69, "War Tax Bill". The Governor, admitting to that instruction, responded that there was no reason as to why the Secretary of State should not ask Colonial governments to consider various forms of war taxation. He added that, a number of these governments had received grants-in-aid from the Imperial Exchequer and it was only right that so far as was possible this burden on the British taxpayer should be lightened. The Governor added, "In common with all Colonial Governments, we have been recently asked to consider the feasibility of an excess profits tax. We shall do so, but unofficial opinion would be consulted before any decision is taken".

⁴⁰⁸ *ANM/KL SS 27*: LCP, 3rd February, 1941, p. 50, "War Tax Bill".

⁴⁰⁹ *ANM/KL SS 27*: LCP, 3rd February, 1941, pp. 50-54, "War Tax Bill". Even though in India Income Tax had been in force for many years, the Indian Government had engaged two tax experts from Somerset House who had worked for months on the details. Thereafter the amendments were under consideration by the Select Committee. In the Colony and Malaya, the intention was to impose the tax not only without first-class expert advice but also without giving those who were directly concerned an opportunity of making representations in regard to their views.

incomes.⁴¹⁰

The Attorney-General and the Financial Secretary, in an attempt to end the controversy which was raging around the legality of this bill, responded that it was a reasonably fair and a comparatively simple direct tax. The Joint Committee in the course of deliberations had given reasons for the omission of a provision for marriage and family allowances at the high exemption limit of \$4,800 a year. Similarly with the 1921 *Royal Commission Report* on United Kingdom income tax, the Committee believed that it would be illogical to grant such allowances as there was no provision for the aggregation of the incomes of husband and wife. Similarly, in the case of partnerships, the underlying factors for the bill were to provide assessment of partnership profits at source with no rebate⁴¹¹ for individual partners were to close the possibility of introducing a bogus partner into the firm so that the share of the profits of each individual might be reduced and thus that they might possibly escape tax altogether. In effect, this bill would prevent evasion of the tax by non-distribution of profits. The essence of this provision was that it met the vexed question of the undivided Joint Hindu Family which was known to have frequently legally managed to evade payments of estate duties. Accordingly, the definition of the Joint Hindu family or coparcenary

⁴¹⁰ *ANM/KL SS 27*: LCP, 3rd February, 1941, pp. 54-64, "War Tax Bill"; *ANM/KL SS 27*: LCP, 13th October, 1941, pp. 164-168. E.N.C. Woollerton, unofficial council member, objected on the ground that the most a layman could pay under the bill was 8% of his income or 1/7d. in the pound and the weakness in the bill was that the rich were under-taxed. In addition, he reiterated, a fully-fledged Income Tax Bill, which allowed a measure of relief for the married man, reduced anomalies and inconsistencies to a minimum and imposed a scale of super-tax, should be considered by the government. E.A.de Buriatte, who supported the bill in principle, reminded the Council that it had been suggested in certain quarter that the passing of the bill would be *ultra vires* the Article VIII of the Letter Patent. In addition, he said, much of the misconception and vilification had its roots in the improper appellation of "income tax". It had led chiefly to the fear that government had rapacious tendencies and would seek to retain the tax as a permanent institution.

⁴¹¹ A term which in certain countries is synonymous with a tax credit. A direct rate rebate connotes a deduction of a percentage rate directly from the standard tax rate. *International Tax Glossary*, ed. Susan M. Lyons, first publ. 1988, (IBFD Publications BV, Amsterdam, 2nd ed., 1992) pp. 201-202.

connotes the definition of “individual person”.⁴¹²

The draft Bills of the Straits Settlements and the Federated Malay States, modeled on the Straits Settlements War Tax Ordinance No.3 of 1919, provided for the imposition in 1941 of a War Tax on profits and incomes for one year only, pursuant to Section 2(2) of the War Duties Ordinance, 1940, with effect from 1st April, 1941, and for the application of the net proceeds of the tax to defraying expenses incurred in the prosecution of the war, and for no other purpose. A tax on incomes was thus reintroduced into the Colony in February, 1941, through the medium of the *Straits Settlements Ordinance No. 3 of 1941*. The Federated Malay States Bill received the sanction of the Rulers later in the same month, and became the *War Tax Enactment No. 5 of 1941*.⁴¹³ The legislation in both territories was made retrospective to 1st January, 1941. Apart from minor points of difference, the Ordinance and the Enactment were identical, and uniform rates of tax were imposed.⁴¹⁴ The scope of taxation of both Ordinance and Enactment was limited to sources of income categorised into salaries, business profits, rents, interest and certain miscellaneous sources whilst the classes of taxpayers effected were individuals, companies incorporated within and outside the Straits Settlements and the Federated Malay States, life assurance companies and partnership, and firms and associations other than corporations.⁴¹⁵

In addition, by March, 1941, the *War Tax (Additional Duties) Bill* was initiated

⁴¹² *ANM/KL SS 27*: LCP, 3rd February, 1941, pp. 64-69, “War Tax Bill”; Income Tax Act, 1967 of Malaysia, p. 4. The event of the war had ended the Colony with a deficit of \$10.2 million. See also *ANM/KL SS 27*: LCP, 13th October, 1941, p. 148, “Address by His Excellency the Governor of the Straits Settlements”.

⁴¹³ *ANM/KL, P/HDN 1, 1947*, p. 2; *ANM/KL SS 27*: LCP, 20th January, 1941, p. 27, “War Tax Bill”; *ANM/KL SS 27*: LCP, 31st March, 1941, pp. 76-77.

⁴¹⁴ *ANM/KL, P/HDN 1, 1947*, p. 2; *ANM/KL SS 27*: LCP, 20th January, 1941, p. 27, “War Tax Bill”.

⁴¹⁵ *ANM/KL SS 27*: LCP, 20th January, 1941, p. 28, “War Tax Bill”. For instance, the subdivision of “Salaries” include pension. Rents would include the net annual value of immovable property and so forth. For detailed amendments to the War Tax Bill, see *ANM/KL SS 27*: LCP, 3rd February, 1941, pp. 69-73, “War Tax Bill”.

to increase the duties on Bills of Exchange whereby the rate of duty was doubled, adding 2 cents to the duty on a cheque, and \$2 per \$1,000 to the duty payable on a Conveyance, Assignment or Transfer. It also increased duties on sweepstakes and bets. The totalisator was liable to pay in all 10% in duty, and sweepstakes to pay 15%.⁴¹⁶ Rubber was also not spared from the duty. It was increased to 5% with the view to additional increases in the Schedules of War Tax. In addition, to further assist the Imperial Government, the limit of borrowing under Section 3 of the War Savings Certificates Ordinance was raised from \$10 million to \$20 million.⁴¹⁷

By October, 1941, during the first year of the reincarnation of the War Tax Ordinance, the government reported that the war tax on incomes had been collected smoothly and without friction. Fears of inquisition, disclosure of commercial secrets, difficulties presented by Asiatic methods of accounting, corruption, flight of capital and large scale evasion had proved to be unfounded. Several thousand assessments had been finalised, whilst surprisingly the number of appeals to the Board of Commissioners had been only about half a dozen. The principle reason why there had been so few complaints about the inequalities of the War Tax Ordinance was that the tax rates were very low; too low for the taxpayers affected to make complaints to the Public Relations Officer. However, the total revenue generated, up to 30th September, 1941, was well above the estimated figure at \$4.5 million whilst the increase in estate duty had produced some \$750,000. By this time, the Straits Settlements Government had graciously remitted a windfall amount of \$71,252,700 by way of direct gifts and gifts of money raised by loans, war saving certificates and special taxation, on top of considerable sums collected by private organizations and remitted to the United Kingdom for various war

⁴¹⁶ *ANM/KL SS 27*: LCP, 31st March, 1941, pp. 78-79, "War Tax (Additional Duties) Bill", and "War Savings Certificates (Amendment) Bill". The increased duties were estimated to generate additional revenue of \$0.5 million per year whilst the sale of *War Saving Certificates* was proceeding satisfactorily. In the Colony, \$4.25 million had been sold. See also *ANM/KL SS 27*: LCP, 25th August, 1941, p. 133, "War Tax (Amendments) Bill" and *ANM/KL SS 27*: LCP, 13th October, 1941, pp. 170-171, "War Tax (Amendment No. 2) Bill" for amendments to the definition of "Company" etc.

⁴¹⁷ *ANM/KL SS 27*: LCP, 8th December, 1941, pp. 200-201, "War Tax (Additional Rubber Duty) (No. 2) Bill"; p. 201, "War Savings Certificates (Amendment No. 2) Bill".

purposes.⁴¹⁸

By November, 1941, the re-enactment of the War Tax Ordinance, 1941 was imminent, and it was recognised that it would require some degree of amendment in order to even out certain inequalities and to improve the machinery of collection. In May, 1941, new Standing Committees had been appointed by the Governor to study the working of the existing legislation, to prepare draft bills for 1942, and to report.⁴¹⁹ The committees deliberated separately, and eventually produced two draft bills, differing in certain respects. They provided for various amendments to the existing laws, including a reduction of the exemption limit from \$4,800 to \$3,000 with the introduction of a marriage allowance of \$2,000 for individuals resident in the Straits Settlements and the Federated Malay States, which had not been available in the 1941 Ordinance.⁴²⁰ In recognition of working wives, the aggregation of the incomes of husband and wife was proposed, and at the same time an increase in the rate of tax at certain levels resulting in the raising of the maximum rate from 8% to 12%⁴²¹ and the imposition of a surtax.⁴²²

⁴¹⁸ *ANM/KL SS 27*: LCP, 13th October, 1941, p. 149, "Address by the Governor of the Straits Settlements"; LCP, 5th November, 1941, pp. 185-190, "War Tax (No. 2) Bill".

⁴¹⁹ *ANM/KL SS 27*: LCP, 5th November, 1941, p. 185, "War Tax (No. 2) Bill". The Committee of the Straits Settlements examined the Ordinance very carefully clause by clause, having been helped by the work of the corresponding Committee in the Federated Malay States with whom there was an interchange of views, by the Association of Chartered Accountants, and also by the very full and detailed recommendations of the Straits Settlements (Singapore) Association who were assisted by the European Association of Malaya.

⁴²⁰ *ANM/KL SS 27*: LCP, 5th November, 1941, p. 186, "War Tax (No. 2) Bill". Initially, the Committee recommended only \$1,000 for the marriage allowance. This, however, brought up the question whether family allowances should be granted in the case of children, dependants, relatives, a housekeeper in charge of children in the case of a widower, or a widowed mother in the case of bachelor. The Committee believed that it was ideal for each individual to be taxed according to his ability to pay judging each case on its own merits, but for the purposes of tax collection, theoretical perfection must give way to practical expediency. It was, therefore, agreed that the line must be drawn somewhere, and it was proposed to raise the allowance to \$2,000 on the understanding that this amount would be an adequate relief for an individual with a wife or wives and children.

⁴²¹ *ANM/KL SS 27*: LCP, 5th November, 1941, p. 188, "War Tax (No. 2) Bill". One of the criticisms of the 1941 Ordinance was that the minimum at which an individual taxpayer should be called upon to pay should be \$3,000 instead of \$4,800, and that the rate should be considerably higher on the big incomes and large profits with a just scale of allowances and deductions. There was unanimous agreement between the Straits Settlements and the Federated Malay States as to the proposed rates of tax, the 1941

However, non-resident taxpayers in the Straits Settlements and the Federated Malay States would be subject to a maximum rate of 12% without relief. In addition, the amendment provided for relief from double taxation.⁴²³

One of the criticisms of the 1941 Ordinance had been of the method of taxing partnership profits, which in many years were taxed at the maximum rate of 8% although the incomes of the partners if taxed separately would be subject to a lower tax bracket. The committee now recommended that a partner in a business be assessed on his share of the partnership income at the rate appropriate to his total income as an individual taxpayer.⁴²⁴ A major amendment proposed was the adoption of the method of taxing incorporated companies used in the United Kingdom by which tax was deducted at source at a flat rate of 12% by the companies from the dividends distributed. The Federated Malay States Committee, however, found the objections to the acceptance of this proposal too great, and to preserve uniformity of procedures throughout Malaya

rates being deemed too low especially in the case of the larger incomes. The scale in Schedule *A* (ordinary tax) commenced at a total income of \$3,000, and the maximum rate had been raised from 8% to 12% which was charged on total incomes not less than \$20,000. The progressive increases in the rate from 2% to 12% had been spread over increases in total income from \$3,000 to \$20,000, and in doing so, the number of intermediate steps or divisions of income had been increased and were different from the divisions in Schedule *A* of the 1941 Ordinance, because it was felt that higher incomes could bear increases better than the lower income.

⁴²² *ANM/KL, P/HDN 1, 1947*, p. 2; *ANM/KL SS 27*: LCP, 5th November, 1941, pp. 185-190, "War Tax (No. 2) Bill"; LCP, 8th December, 1941, pp. 203-206, "War Tax (No. 2) Bill". The War Tax (No. 2) Bill which was tabled using a Certificate of Emergency and had been referred to the Select Committee, effective from the 1st January, 1942, was read the third time and passed with minor amendments. The scale in Schedule *B* (Sur-tax) commenced at a total income of over \$20,000, and the rate increased in respect of successive addition to total income until \$50,000 was reached. All income above \$50,000 was subject to a flat rate of 20%. Surprisingly, the allowances and deductions were not so generous in the case of sur-tax (Schedule *B*). No deductions for the purpose of sur-tax were allowed for income derived from the cultivation of rubber and the mining of tin ore, payments towards Widows and Orphans' Pensions Fund, Provident Funds or Life Assurance Premia, dividends received from companies including dividends received from tin and rubber companies, or any marriage allowance. Due to the few deductions allowed, the scale of sur-tax had been increased progressively by the slab system, and not the step system as in the case of Schedule *A*. For detailed calculations of sur-tax, see *ANM/KL SS 27*: LCP, 5th November, 1941, p. 189, "War Tax (No. 2) Bill".

⁴²³ *ANM/KL SS 27*: LCP, 5th November, 1941, pp. 186-187, "War Tax (No. 2) Bill".

⁴²⁴ *ANM/KL SS 27*: LCP, 5th November, 1941, p. 186, "War Tax (No. 2) Bill".

which was essential in order to avoid confusion in the assessment and collection of the tax, this proposed amendment was not included in the 1942 bill.⁴²⁵

Another major objection to the 1941 Ordinance had been the absence of relief in respect of previous business losses. The government argued that since the yearly imposition of the Ordinance was only a temporary war measure, it was illogical to provide such relief. However, under the proposed 1942 Ordinance, it was recommended to allow under Section 7(i) valid deduction of business losses incurred during the year preceding the financial year assessed which had not been allowed as a deduction from the taxable income of the previous year. Deductions were also allowed for certain capital expenditure for replacement by the owner of obsolete plant and machinery in a business.⁴²⁶

Following the historic landing and offensive operation of the Japanese Imperial Army at Kota Bharu, Kelantan, in the early morning of the 8th December, 1941, the Colony's bill was enacted as the *Straits Settlements Ordinance No. 64 of 1941* on 19th December, 1941, and some tax returns were actually assessed and paid under its provisions in the short period between that date and the occupation of Singapore by the Japanese. Later in December, 1941, the Federated Malay States draft bill was passed by the Federal Council, but it was understood that the bill, although published in the *Government Gazette*, never became law.⁴²⁷

The only purpose of the 1941 and 1942 legislation was to raise a revenue for War purposes, the total proceeds to be handed over to the Imperial Government. Consequently provisions were included which would normally have been omitted in a

⁴²⁵ ANM/KL SS 27: LCP, 5th November, 1941, p. 186, "War Tax (No. 2) Bill". Under this method, each shareholder would be furnished with a statement showing the gross amount of such payment, and the rate and the amount of tax so deducted and the net amount actually paid. The taxpayer would then use the tax paid to set-off against the tax payable or claim a refund when he voluntarily submitted his return.

⁴²⁶ ANM/KL SS 27: LCP, 5th November, 1941, p. 188, "War Tax (No. 2) Bill".

⁴²⁷ ANM/KL, P/HDN 1, 1947, p. 2.

comprehensive Income Tax Code. For example, profits and income on which tax had been paid at an equal or greater rate elsewhere in the British Empire were exempted from local taxation. Rubber and tin producers were also exempted subject to their satisfying the Collector that they had paid a specially imposed export duty.⁴²⁸

It had been estimated that the yield of War Tax in each territory in 1941 would be approximately \$10 million but in the case of the Federated Malay States this included approximately \$6 million representing additional export duty on rubber and tin. Assessment actually made totaled some \$8.5 million and \$4 million in the Straits Settlements and the Federated Malay States respectively.⁴²⁹

As a result of the change of administration from the British to the Japanese, the Federated Malay States Tax records and some members of the staff were transferred from Kuala Lumpur to Singapore on 8th January, 1942. Following the capitulation, and during the period of occupation, the Japanese set up a Joint Income Tax Organisation in Singapore for the collection of arrears of War Tax assessed in 1941 but outstanding as at mid-February, 1942, and for completing the assessment and collection of War Tax in cases remaining unassessed in 1941. So far as can be ascertained from available records, about \$397,000 Straits Settlements Tax was assessed and unpaid as at February, 1942, and approximately \$250,000 was outstanding under the Federated Malay States Enactment. The Japanese administration made further tax assessments totaling some \$60,000 under the provisions of the Straits 1941 Ordinance, all of which was collected, plus about \$346,000 of the \$397,000 which was outstanding at February, 1942.⁴³⁰

Unfortunately, no details of Japanese income tax assessments under the

⁴²⁸ *Ibid.*, p. 2.

⁴²⁹ *Ibid.*, p. 2.

⁴³⁰ *ANM/KL, P/HDN 1, 1947*, p. 2; *ANM/KL SS 27*: LCP, 3rd February, 1941, p. 59, "War Tax Bill". Similarly, the German Imperial Army had imposed war taxes on States captured during the war. They had even fined the government officials who did not appear sufficiently pliable.

Federated Malay States Enactment have been traced, but a total of some \$320,000 Federated Malay States tax was actually collected through the Joint Office. Assuming this sum includes a substantial proportion of the \$250,000 assessed prior to the removal from Kuala Lumpur, it seems reasonable to assume that assessments aggregating between \$70,000 and \$80,000 were made under the Enactment during the Japanese regime. So far as was known, no system of income tax had been imposed in any of the former UFMS.⁴³¹

⁴³¹*ANM/KL, P/HDN 1, 1947, p. 2.* No record on the administration of taxes during the Japanese occupation for period between 1942 to 1945 in Malaya and Singapore is available at the Public Record Office, London.

Tax Policy from Post War to pre-Independence(1946-1957)

After the unconditional surrender of the Japanese Imperial Army, Britain regained control and administered the Malay Peninsula and Singapore through the British Military Administration (BMA) from September, 1945 to March, 1946. During this short period, in early 1946, the possibility of the re-introduction of income tax in Malaya was forecast. The government which had earlier pledged that the War Tax on incomes was a temporary measure finally broke its own promises. Press and public comment tended on the whole, but more noticeably in Singapore, towards acceptance of the principle that taxation of income was the fairest and most equitable method of raising revenue, and there seems to have been little disposition in the Colony to question the need for the provision of social services on an adequate scale. Nevertheless, the government failed to secure the agreement of a Select Committee consisting of the Acting Financial Secretary and all the Unofficial Members to provision being made for an income tax in the Colony's Estimates for 1947. Moving the adoption of the Committee's Report, the Acting Financial Secretary said,⁴³²

"Your Committee is almost unanimous in the opinion that income tax should be deleted from the Estimates in respect of 1947. It considers that income tax is the most equitable form of taxation and that it should be introduced but that it is too early after the re-occupation to do so in 1947. Your Committee is strongly influenced by the following facts:

1. That most business have suffered from serious losses as a result of the occupation and it is necessary to make good those capital losses as far as possible out of the current income and that the imposition of income tax would retard that process.
2. Your Committee feels that much of the work which is being debited in the 1947 Budget is in the nature of rehabilitation expenditure and should be charged to a Loan Account.
3. That there is no reason why the Budget should be balanced in times of abnormal prices when the deficit can be met from local loans provided that it is not intended to budget for a deficit for more than a very short period.....

I feel I must stress, therefore, that the question of imposition of income tax can only be regarded as deferred for a short time. The Committee fully realises that this Colony cannot be financed over a long period by means of loans and that the Budget must be balanced as between Revenue and Expenditure at the earliest

⁴³² ANM/KL, P/HDN 1, 1947, p. 3.

possible date. Honourable Members are satisfied that its immediate imposition would be inequitable but that its embodiment in the fiscal structure of the Colony is both equitable and advisable. I am sure that it will be appreciated that measures for an increase in the educational and medical facilities provided by the Colony must be delayed if the imposition of income tax is long postponed and that no long-term policy can be evolved for the improvement of Singapore's health and culture.....”

In the absence of any provision for income tax in the Malayan Union⁴³³ 1947 Estimates, the subject was not fully debated when the *Supply (No. 3) Bill, 1946*, was taken. It seems, therefore, apt to conclude this historical outline with an extract from the Financial Secretary's review of the Estimates as presented to the Advisory Council in December, 1946:⁴³⁴

“The budgetary position is, therefore, still extremely precarious as our reserves will be practically exhausted by the end of 1947 and additional taxation will be necessary.....

While at present the need for additional revenue is paramount, the revenue system of the country needs revision and the taxation policy needs to be more broadly distributed: in most countries this is achieved by means of an income tax and if income tax were to become established in Malaya and when the need for additional revenue becomes less urgent, it should be possible to review many of the present forms of taxation.

The proposal to introduce income tax should therefore not be looked upon entirely as a proposal to increase taxation but, in part at least and taking the long view, as a proposal to shift the burden of taxation on to the shoulders of those who can most properly be expected to bear it.....”

It would have been surprising if official reference to the possibility of the re-introduction of income tax had not aroused widespread interest and a considerable measure of criticism. An examination of extracts from the principal English language newspapers published over the period in question since the subject was bruited shows that public

⁴³³ *ANM/KL Spore* 27: LCP, 16th November, 1954, p. B351. On the 1st April, 1946, the establishment of the Colony of Singapore and the Malayan Union was concluded, and the Straits Settlements, the Federated Malay States and the UFMS were dissolved. However, not until the 16th October, 1954, it was possible to draw up a balance sheet of these assets and liabilities and to make final proposals for their division between the Colony, the Federation of Malaya (as successors to the Malayan Union Government and on account of Penang and Malacca) and the Colony of North Borneo (on account of Labuan).

⁴³⁴ *ANM/KL, P/HDN* 1, 1947, p. 3.

interest, as expressed in newspaper comment, underwent a progressive diminution until the end of the year, when the inclusion of income and expenditure on account of income tax in the *Singapore's 1947 Estimates*, and the subsequent debate in the *Advisory Council*, revived the issue to a considerable extent. On the failure of the government to obtain the *Select Committee's* agreement to its proposals, interest waned, to be renewed again for a spell by the announcement of the appointment of a Special Committee by the Secretary of State for the Colonies to report to their Excellencies the Governors of the Malayan Union and Singapore, with recommendations, including a draft income tax bill, and proposals for administration and staffing. The subject was, however, given a decided fillip by the release of the Committee's terms of reference at the end of May, 1946 and the publication of views attributed to the Committee's members in the course of interviews with various individuals and bodies in Penang.⁴³⁵

Some idea of the variation in the amount of interest displayed could be obtained from the fact that, between May and November, 1946, fewer than a dozen articles and letters on income tax were published in the English language press, whereas during the following four weeks, the projected tax was "news" to the extent of approximately forty leading and subsidiary articles and letters. In the ensuing period to the middle of May, 1947, public interest as evidenced by press comment declined noticeably, saved for a revival in April and May, 1947 during the Committee's member visit to Singapore. In fact, as early as June, 1947, one newspaper article contained the observation,

".....I sometimes wonder whether it is a sign of the times that the public have so far taken so little interest in the income tax proposal....."

Fresh impetus to the controversy was given by the publication of speeches voicing criticism and objections at the June, 1947 meeting of the Malayan Union Advisory Council, when the public was urged to take all steps to voice its disapproval and to make known its views to the government. The resurgence of interest aroused by the publicity given to the views of the unofficial members of the Council had been sustained by

⁴³⁵ ANM/KL, P/HDN 1, 1947, p. 3.

reports of speeches at association meetings and suggestions for contesting the forthcoming elections.⁴³⁶

Although the main lines of criticism and objection, as set out in the press and as expressed verbally by individuals and representative bodies, were very much the same as those advanced in 1940,⁴³⁷ comments had, on the whole, so far as can be judged as to this date, been less rhetorical. It must, however, be frankly acknowledged that the balance of opinion was hostile, based on the alledgely unfair incidence, resulting from anticipated tax evasion, and inopportuneness, rather than on matters of principle.⁴³⁸

From late of 1946 to early 1947, the proposals for constitutional changes had been linked with income tax issues and the slogan "no taxation without representation" was frequently in evidence. On the other hand, two or three newspapers, and several of the representatives interviewed, supported the income tax with varying degrees of enthusiasm, whilst opinion among private individuals, to the extent that the committee's member were in a position to ascertain, was more evenly divided.⁴³⁹ The Joint Taxation Committee concluded that there was, perhaps a more general acceptance of the merits, in principle, of direct, as opposed to indirect taxation in Singapore than in the Malayan Union, due possibly to the realisation that the traditional concept of a free port,

⁴³⁶ *ANM/KL, P/HDN 1, 1947, p. 4.*

⁴³⁷ For lists of persons, entities interviewed, see *ANM/KL, P/HDN 1, 1947, pp. 23-25.*

⁴³⁸ *ANM/KL, P/HDN 1, 1947, p. 4.*

⁴³⁹ *ANM/KL, P/HDN 1, 1947, p. 4.* R.B. Heasman as head of the committee reported on 22nd July, 1947 in Kuala Lumpur, "I have had informal conversations and discussions with most of the leading representative bodies and individuals in the Malayan Union and Singapore. In addition, written representations have been submitted by the solicitors acting for the All-Malaya Nattukottai Chettiers Chamber of Commerce. A list of persons interviewed is included in Part IX of this report. I was accompanied at the majority of the meetings in the Union by Mr. E. M. McDonald, formerly Collector-General of War Tax in the Federated Malay States, and in Singapore by Mr. D. H. Tudor, formerly Collector of War Tax, Straits Settlements. It is pleasant to record that the talks were conducted throughout in a friendly atmosphere, despite occasional recourse by representatives to somewhat intransigent forms of special pleading. I take this opportunity to record my thanks for the courtesies extended to me on all occasions."

dependent almost entirely on its entrepôt trade, precluded the raising of revenue by additional import duties in the Colony.

Nevertheless, it was clear that a good deal of objection in both territories was based on misconceptions, and failure--or disinclination in some instances--to appreciate the full implications of a continuance of the present very serious financial situation. The views of the opposition varied according to the background, and some of the arguments put forward had the unmistakable stamp of conforming to a pattern, as reported by the Committee,⁴⁴⁰

“.....But I was surprised, on one occasion, to be told by a representative of a business association that the membership, although not in favour of the immediate introduction of income tax, would “welcome” it later. There is general agreement, in view of the close economic links between the Union and Singapore, on the need for a tax, if and when it is enacted, to be introduced simultaneously in both territories, with the closest possible similarity in the main legislative provisions. Unilateral action, or wide differences in scope would, it is thought, give rise to a considerable complications.”

The reactions of the vernacular press to the proposal , broadly speaking, were divided. The Chinese press, which mainly reflected the attitude of mercantile interests, consistently opposed the income tax. Their arguments were broadly on the difficulty of fair enforcement and noting that the boom conditions were only apparent, any profits being earned being required to meet costs of rehabilitation. On the other hand, left wing newspapers supported opposition, and ignored the benefits which might be expected to accrue to their readers from the proceeds of the tax.⁴⁴¹

The majority of the Indian newspapers put the view of the Indian workman, and not that of the merchant. They supported the income tax on the logical ground that it was a means of redistributing income in the form of social services for the working people. The Malay press, although displaying an increasing interest, was primarily

⁴⁴⁰ *ANM/KL, P/HDN 1, 1947, p. 4.*

⁴⁴¹ *Ibid., p. 4.*

concerned with the political angle, and the political implications of economic policies. There were, however, signs that recent increases in the prices of certain commodities had evoked some reactions against the principles of indirect taxation.⁴⁴²

To sum up, the majority opinion, as expressed in the English language and vernacular newspapers, and by representative bodies and individuals, was opposed to the introduction of income tax. The main heads of objection and criticism at that point of time can be epitomised from several perspectives.⁴⁴³ It was argued that the government had not clearly demonstrated that additional revenue was necessary. The public believed they were entitled to full information with regard to the position of the pre-war reserve balances and to be satisfied that a policy of drastic retrenchment was not required. Meanwhile, they proposed that all proposals involving major expenditure should be deferred. In any case, the cost of schemes for long-term development should be met from loans, the servicing of which could be financed out of revenue. Assuming that an immediate need for additional revenue could be established, the money should be raised by increasing the rate of import duties. In the case of the Malayan Union, the possibility of an increase in the range of subjects for indirect taxation should be reviewed.⁴⁴⁴ They also claimed that consideration of income tax was premature until the government had settled four important post-war problems, namely, War Risk Insurance Claims, War Damage Claims, Debtor/Creditor relationship, and the Moratorium. In addition they

⁴⁴²*Ibid.*, p. 5.

⁴⁴³*Ibid.*, p. 5.

⁴⁴⁴*ANM/KL, P/HDN 1, 1947*, pp. 6-8. By the end of 1947, the Malayan Union surplus balances of \$210.3 million at 1st April, 1946 would be spent, the public debt would be increased by \$80 million, and the cash available would be insufficient for a working balance. With the possible exception of the liability to be discharged under the *War Risks (Good) Insurance Act*, which was estimated at \$168 million for the Malayan Union and Singapore against a fund of approximately \$15 million, and War Damage, the finances of the Union might be in an imponderable situation. In her reliance on rubber and tin exports on one hand, and rice imports on the other, the Malayan Union economy was particularly sensitive to conditions prevailing outside her borders. Under this premise, the government contended that it was necessary to broaden the tax base through income tax.

further suggested that the government introduce State Lotteries⁴⁴⁵ and impose Excess Profits Tax.⁴⁴⁶

Failing to convince the government, the critics reiterated that the proposal would be subject to considerable tax evasion, especially in the case of the non-European sections of the trading community, amongst whom there was said to be a rooted antipathy to any form of taxation involving disclosure of their family or business affairs. The complexities of Chinese business methods, and the unorthodox systems of accounting employed by Asians in the allegedly few cases where records maintained were frequently cited as contributory factors which would enable potential taxpayers to escape. As a result, the tax would operate unfairly against Europeans, more particularly amongst the salaried classes. In addition, those who professed to foresee widespread tax fraud explained that evasion would not arise solely from an unethical attempt to avoid assessment and payment of tax, but because of the essential differences between social units in the West and East, where the West is individualistic whilst the basis of Chinese society is the family. As such, they argued, since the assessment of income under the income tax principle was on the basis of individuality, it was difficult to assess the family unit. However, this argument was rebutted on the basis that it was the

⁴⁴⁵ *ANM/KL, P/HDN 1, 1947*, p. 8. The government, however, rejected this proposal on the following premise: 1) The practice was contrary to the principle of thrift so essential in a healthy community, especially after the war, 2) the proposal would exploit the undesirable weakness of relying upon a gambler's hope of wealth divorced from work, and the proposal was offensive to the conscience of important and experienced elements of public opinion in Malaya. However, this reason for objection was contrary to the government policy in the past of taxing sweepstakes and promoting gambling den within the opium farm, 3) the proposal was in fact a system of raising revenue without regard to the capacity of the individual to pay, 4) sound financial policy demanded that the revenue of any territory should be as stable as possible in order to permit of proper estimating, whilst revenue from State Lotteries was unstable and unsuitable as a permanent means of raising revenue.

⁴⁴⁶ *ANM/KL, P/HDN 1, 1947*, pp. 8-9. Even though this proposal was attractive, the government was of the opinion that an efficient administration of the Excess Profits Tax was impracticable and that its legislation must necessarily be more complex than an Income Tax Code. Successful administration would only be possible if an efficient organisation of income tax was already in existence. A method of tax computation which sufficed for income tax was inadequate for Excess Profits Tax and in the absence of earlier pre-war business financial records, it was difficult to ascertain profits and have a capital standard which was necessary to compute the tax satisfactorily. Further more, the proposal was much more likely to induce restrictive effect on enterprise and incentive than income tax, which had no such effect.

Chinese trading community which consistently opposed the imposition of a tax they were expected to easily evade, and any difficulty arising could be dealt with under the provisions of the *Registration of Business Ordinances* with heavy penalties for non-compliance⁴⁴⁷ In addition, certain Asian traders, especially the Chettiers, who employed the family unit and were previously known to have evaded estate duty due to the nature of their business, had kept their audited accounts in conformity with the requirements of the Indian Taxation Authorities, and their methods of book-keeping and accounting had been favourably commented on by the Judge of the Judicial Committee of the Privy Council.⁴⁴⁸ The government, in response to the phantom massive tax evasion issue, argued that the *Report of the Royal Commission on Income Tax (Great Britain)* in 1920 showed that tax evasion was not confined to any particular class of taxpayers. In fact, senior members of the 1941 War Tax Organisations confirmed that there was no evidence of widespread evasion by Asian taxpayers during the admittedly brief period in which the legislation was operative.⁴⁴⁹

⁴⁴⁷ *ANM/KL, P/HDN 1, 1947*, pp. 10-11. For this purpose, the power to address the issue of the plurality of Chinese names was vested under the provisions of the Registration of Businesses Ordinance provided that an associate of a business falling within the scope of the Ordinance must declare their full names and aliases. It followed that every name by which an individual was known was recorded, and all businesses in which he had an interest must be known on the form of registration. For instance, a Chinese name Lim Peng San@Low Sang (Lim is the family name) could be declared as aforementioned, or P.S. Lim, or Low Sang etc. Without this provision, it would be difficult to proceed with investigation of tax evasion cases. Moreover, this provision was not 100% foolproof. There were cases the taxpayer used a nickname and nobody in the village knew his registered name when asked by the income tax staff.

⁴⁴⁸ *ANM/KL, P/HDN 1, 1947*, pp. 9-10. In this respect, the government agreed that some evasion of income tax would take place in the form of false customs declarations, substantial under-valuation and concealment of assets for death duty purposes, while smuggling, and numerous other anti-social activities were just as frequent as false returns of income, for example, substantial understatement of profits and keeping two accounts, one for the bank and one for the Inland Revenue Department which disclosed a substantially lower profit margin. In fact, by 1947, fraud was still practised in the United Kingdom where income tax had been part of the revenue system since 1799 and where it was administered by a specially recruited, highly trained and efficient organisation. The government further explained that the extent to which tax evasion was carried out in the United Kingdom was difficult to assess, but fraudulent practices, under the pretext of "legal tax evasion", had undoubtedly increased due to the very heavy burden of taxation imposed; to the shortage of staff in the administrative-technical grades resulting from the absence of recruitment since 1939, and to the greatly increased volume of work brought about by Excess Profits Tax and other war-time legislation.

⁴⁴⁹ *ANM/KL, P/HDN 1, 1947*, p. 10. A report on the working of an earlier Straits Settlements War Tax Ordinance contained the paragraph, "...The Chinese on the whole supported the Tax in a very proper spirit and the returns from them were quite up to the expectations of the writer....". This argument was

It was also argued that due to the fact that most of the income tax staff, who were mostly Europeans, could not communicate in widely spoken local languages, whether Malay, Chinese dialects, or Tamil, the employment of translators was likely to be a contributory factor for the possible occurrence of wide-spread bribery and corruption. In addition, the setting-up of a new centralised taxation department would accentuate this evil. The critics argued that an income tax would involve the setting-up of a new and expensive Income Tax Department, the cost of which would be out of all proportion to the tax yield. The government, admitting that to a certain degree bribery and corruption existed wherever taxation, direct or indirect, was levied, and whenever public monies were expended or collected, further reiterated that the argument was unfounded on the basis of excusable ignorance of the department machinery which would be set up. In addition, the government noted that heavy penalties were provided in the draft bill for persons employed in the administration of the tax who might be found to have misused their position and influence.⁴⁵⁰

Furthermore, it was argued that the salaried classes already found it difficult to

supported by the following statistics of the income tax collected in the Federated Malay States and the Straits Settlements in 1941 that also shows that the tax was not inequitable in its incidence:

Taxpayer	Federated Malay States (\$)	Straits Settlements (\$)
Europeans	1231574	2266000
Chinese	12230151	1820000
Indians	238882	401000
Malays	67951	48000
Eurasians	8118	19000
Others	2909	207000
Companies	1138499	3730000
Total income tax collected	3918084	8491000

⁴⁵⁰ *ANM/KL, P/HDN 1, 1947*, pp. 11-13. For six years from 1917 to 1922 inclusive, the cost of administration was only 1.57% of the gross collection, whilst it was between 2 to 2.5% in 1941 for the Federated Malay States and slightly lower percentage in the Straits Settlements.

make ends meet, despite the cost of living allowances granted by the government and some outside employers. The levying of an income tax would increase the cost of living, and would result, it was feared, in all-round applications for more pay. Consequently, existing difficulties in the recruitment of European staff would tend to multiply. It was thought that some Europeans might decide to leave the country. The government, in response, reiterated that the conclusions were unfounded because that business profits were payable out of the profit margin, and not part of the cost of earning the profit. However, the government admitted that it was possible that an individual with family commitments might find it difficult to make ends meet on existing scales of pay. In that respect, the government assured the public that the Joint Taxation Committee would closely study the fixing of personal allowances, taken in conjunction with the rates of tax, so that it would not entail hardship.⁴⁵¹

On 1st April 1946, a proposal for a Malayan Union⁴⁵² comprising all the Malay States was inaugurated, despite strong opposition from Malay leaders, various local organizations, and some former senior colonial officers.⁴⁵³ Bowing to the opposition, the Malayan Union was abandoned and a working committee was set up including representatives of the Sultans and the United Malays National Organization (hereinafter referred to as "UMNO"), which finally agreed to the constitution embodied in the

⁴⁵¹ *ANM/KL, P/HDN 1, 1947*, p. 12.

⁴⁵² The Japanese during the war in their attempt to support their occupation of Malaya by exercising a policy of divide and rule. Their policy toward the Chinese in China stood little chance of getting support from the Chinese in Malaya. So in order to please the Malays, they suppressed and persecuted the Chinese. However, this policy backfired: either they did gain support from the Malays because of their policy of returning Kedah, Perlis, Kelantan and Trengganu to Siamese rule in October 1943. This ploy resulted in Sino-Malay antagonism which erupted into revenge and fighting, and prompted the proposal for the Malayan Union. This proposal, drafted by the Colonial Office Planning Unit and put forward by the newly elected Labour Government in Britain, was decided without consultation with any significant warring factions. See C.B. Simandjuntak; *Federalisme Tanah Melayu: 1945-1963* (Petaling Jaya, 1985) p. 43.

⁴⁵³ Amongst those who expressed their protest were Sir Frank Swettenham, Sir Ronald Braddell (one of the advisers to UMNO), Lawrence Guillemard, Cecil Clementi, Graham Maxwell and Richard Winstedt (Andaya, *op. cit.*, p. 256); Grammans, and Rees-Williams (Simandjuntak, *op. cit.*, p. 48). Cf., N. J. Ryan; *The Making of Modern Malaysia and Singapore*, p. 231.

Federation of Malaya Agreement of 1 February, 1948.⁴⁵⁴ When the proposal to re-enact the Income Tax Ordinance in 1947 was being tabled, obviously the Federation of Malaya Agreement was not yet concluded and the Federal Constitution had not been finalised. It was argued that the proposed constitutional changes should be put into effect before fiscal policies were decided. The critics argued that it would be wrong to impose income tax in the absence of a clear mandate from the people that they desired this form of taxation. The government, in answering this the argument, argued that the “plea of no taxation without representation” ignored the fundamental principle that the process of government must continue; actions and safeguards which were believed to be necessary for the general well-being could not be abandoned or deferred solely on the ground that any future constitutional body which may be set up might promote an alternative policy. Finally, the government stressed that the main desideratum was the need for revenue; the need was urgent, imperative and vital.⁴⁵⁵

After the war had ended, with the unconditional surrender of the Japanese Imperial Army at the end of 1945, Malaya’s economy and civil administration were in a fragmented and chaotic state.⁴⁵⁶ It was argued that the re-introduction of the proposal in 1947 was not opportune because the country had not yet recovered sufficiently from the effects of the Japanese occupation, and the process of rehabilitation was not complete; consideration of the matter should be deferred for two or three years. Surprisingly, evidence had showed that Malaya’s economic recovery from the effects of the occupation, with the exception of the tin industry, had been rapid. Moreover, the government found out that the argument that the time was not opportune was to certain extent influenced by the comparison of large profits made in 1946/47.⁴⁵⁷

⁴⁵⁴The Colonial Office List, 1955, p. 130.

⁴⁵⁵ANM/KL, P/HDN 1, 1947, p. 13.

⁴⁵⁶Gullick, p. 83; R. Allen, *Malaysia: Prospect and Retrospect* (London, 1968) p. 82.

⁴⁵⁷ANM/KL, P/HDN 1, 1947, pp. 13-14. A newspaper article, reviewing progress in Singapore during the first year of takeover from the British Military Administration, commented, “.....In many ways, particularly in the way of money making, it has been more than a good year. It has been a miraculous

Finally, income tax was brought into effect in the Federation of Malaya from 1st January, 1948 by the Income Tax Ordinance No. 48 of 1947. It should be noted that the only previous tax of this nature in Malaya and Singapore was the abortive War Tax which was imposed shortly before the Japanese Occupation and terminated with that event.⁴⁵⁸

The 1947 Ordinance was enforced both in Malaya and Singapore until late 1951 when an increase of 10% was imposed on Companies Tax.⁴⁵⁹

Two years after its inception, the Income Tax Department still faced with the problem of filing up senior posts, resulting in the volume of un-assessed returns increases. Considering the huge backlogs, the government estimated that the yield for the 1949 assessments was between \$23 to \$25 millions. However the government cautioned that it would be impossible to complete the assessment and collection of more than 50% of the 1949 tax before the end of the year.⁴⁶⁰

year.....". This view was supported by the report of the member of United Kingdom Delegation to the Conference of the Economic Commission for Asia and the Far East that Malaya had made the most rapid strides in recovering from the effects of the war.

⁴⁵⁸ANM/KL P/HDN (X), *Personal Income Tax in the Federation of Malaya*, (Comptroller-General of Income Tax, Kuala Lumpur, 15th February, 1963). The tax code of 1948 was a very comprehensive one covering almost every aspects of direct taxation. 45 items subject to taxation were being discussed. Or detailed discussion on this matter, see CO 941/9: PFC, 31/5/48.

⁴⁵⁹ANM/KL SS 27: LCP, 16th October, 1951, pp. B335-B336. *Singapore Free Press* and other newspapers had reported on some indication as to whether any taxation was going to be imposed in 1951. An Economic Review forecasted that, "One Singapore newspaper has forecast that the "budget" will contain no increases in taxation in 1952. There was no doubt about the truth of that statement as the Colony does not impose new, or revise existing, taxation by means of its budget. With one exception of income tax, the rates of which were laid down in the Income Tax Ordinance, nearly all other forms of taxation were determined by officials "under powers conferred" and may be varied and imposed by Gazette Notification overnight".

⁴⁶⁰CO 941/10: PFC, Federation of Malaya, 15/11/49, "High Commissioner's Address", p. 388, 134. Table shows income tax collected by races for the year assessment 1948 until 11th June 1949:

Category of Taxpayers	Revenue (\$)	% Category
European	2292408	17.14

By September, 1952, the graduated scale rates of income tax in Singapore had been increased to maximum 30%, as compared to Hongkong at a flat rate of 12.5%.⁴⁶¹ By October, 1953, the revenue showed a significant fall, the bulk of which was anticipated to be due to a reduction in income tax collection by \$10 million. This was partly due to some recession in trade and partly due to a large backlog of arrears of tax having been garnered in 1953.⁴⁶² By October, 1953, the phobia of increased taxation still lingered in the mind of the general public. The government was warned that any increase would inevitably result in the flight of capital from the Colony, as had happened to the Dutch Colonial administration in Indonesia.⁴⁶³

Until the end of 1953, the imposition of direct taxation went on smoothly. However, every year until 1952, amendments were instituted to the 1947 Ordinance with regard to the scope of taxation. In October 1953, the Malayan Rubber Export Registration Board which was established in the Colony under section 4 of the Rubber Shipment and Packing Control Ordinance No. 12 of 1950 and also under a similar

Chinese	1227308	9.17
India	177990	1.33
Malay	54141	0.4
Companies, Club, Association	5236361	39.14
Collected in the United Kingdom by representative of the Income Tax Department on income of registered companies	4388868	32.81
Total revenue from direct taxation	13377076	100

From the statistics above, it shows that the Malays were the least paying the income tax. The 0.40% contributed by the Malays shows that they were lagging far behind in economy, compared to other races.

⁴⁶¹ *ANM/KL Spore 27*: LCP, 16th September, 1952, p. B292.

⁴⁶² *ANM/KL Spore 27*: LCP, 20th October, 1953, p. B311.

⁴⁶³ *ANM/KL Spore 27*: LCP, 20th October, 1953, p. B318. According to John Laycock, unofficial member, there were numerous instances which the rich people immediately left as soon as taxation became too onerous in their opinion. For instance, in 1919, the Dutch Colonial Government in Indonesia had just introduced direct taxation for the first time in Java. They made it retrospective to the extent of two years. The rates at that time were not so high as the rates imposed in the Colony. Ever since that day, capitals had steadily flowed from Java with no indication to return.

Ordinance in the Federation of Malaya with the object of ensuring the *bona-fide* shipping and packing of rubber for export, applied for an exemption from the payment of income tax under section 13(1)(e) of the Income Tax Ordinance.⁴⁶⁴

Surprisingly, with all these yearly amendments until 1952 made to the Income Tax Ordinance 1947, personal allowances were spared upward revision despite the rising cost of living. At the same time as the Malayan Rubber Export Registration Board requested exemption, a motion by C.R. Dasaratha Raj, unofficial member of Legislative Council, was tabled for an upward revision to the deductions which were last fixed in 1947, allowed from assessable income of an individual resident in the Colony and a Hindu Joint Family under section 35 of the Income Tax Ordinance, arguing that the matter should be referred to the Malayan Board of Income Tax for uniformity.⁴⁶⁵ These inadequate allowances were confined to the individual, his wife and children, whereas it was a known fact that due to the nature of the Asian family institution in which by custom and tradition, the breadwinner was invariably expected to support his dependent parents and near relatives. It was argued that a principal weakness of the 1947 Ordinance was that it failed to address this very important issue of Asian family values. Even though the 1947 Ordinance was based on the War Tax Ordinance of 1919 which was in turn modeled on the United Kingdom Income Tax Ordinance, the latter granted allowances for dependent parents and certain relatives, whilst the Ordinances of the Colony and the Federated Malay States did not.⁴⁶⁶

⁴⁶⁴ *ANM/KL Spore 27*: LCP, 20th October, 1953, p. B327. Pursuant to sub-section (1) of section 102 of the Income Tax Ordinance, 1947 (No. 39 of 1947), as amended by the Income Tax (Amendment) Ordinance, 1948 (No. 30 of 1948), the Income Tax (Amendment) Ordinance, 1950 (No. 44 of 1950), the Income Tax (Amendment No. 2) Ordinance, 1950 (No. 46 of 1950), the Income Tax (Amendment) Ordinance, 1952 (No. 29 of 1952), resolved that the Malayan Rubber Export Registration Board, which derived income from fees payable in respect of certificates issued under section 7 of the Rubber Shipment and Packing Control Ordinance (No. 12 of 1950), be added to the First Schedule to the Income Tax Ordinance, 1947".

⁴⁶⁵ *ANM/KL Spore 27*: LCP, 20th October, 1953, pp. B328-B335, "Income Tax Deductions (Personal Allowances)".

⁴⁶⁶ *Ibid.*, pp. B328 - B329. The Financial Secretary in response to the motion said in sarcastic mode that the motion had been discussed in previous meeting and the minutes should be read as "...an amendment was made to the motion simply to send it to the Malayan Board of Income Tax for a review...at that

The Financial Secretary further reiterated that it was assumed that the present allowances were inadequate with the maximum aggregate amount of such allowances granted was \$12,150 which was comparatively much higher than the allowances provided in Ceylon.⁴⁶⁷

The Financial Secretary reminded the Council that the so-called "free services" of the United Kingdom had cost the taxpayer something very much more than what a taxpayer paid in the Colony--in all kinds of heavy taxes and in income tax. By comparison, in Singapore and the Federation of Malaya, the fiscal structure was such that unless a person paid income tax, drank liquor, smoked tobacco or owned a motorised vehicle, broadly speaking he paid no taxes whatsoever. That meant to say that the vast bulk of the population paid nothing yet expected social services modeled on those of the United Kingdom and demanded more and more amenities and a rise in the

meeting representations were made why the allowances should be increased, and that a very distorted picture was made....".

⁴⁶⁷ *ANM/KL Spore 27*: LCP, 20th October, 1953, pp. B329-B330, "Income Tax Deductions (Personal Allowances)".

Personal Relief	SS and Federation of Malaya (\$)	Ceylon (Rupees)	India (Rupees)	U. K (£)
Self	3000	2,000 (\$1,285)	1,500 (\$965)	120 (\$1,029)
Wife	2000	1,500 (\$965)	1,500 (wife+children)**	90 (\$771)
Children	3,150 (up to 9 children, graduated from \$750 to \$200 for the ninth child)	4,500 (\$2,893, up to 4 children)		85 (\$729) per child
Insurance	4000			
Dependents				
Total	12150			

**Maximum aggregate allowance for Hindu Joint Family.

Comparatively, maximum allowances for a massive Hindu Communal Family were aggregate allowances (self+wife+children) of 8,500 rupees (\$5,400) as against \$8,150 in the Straits Settlements and the Federation of Malaya. There was no Hindu Joint Family allowance in Ceylon which was predominantly Buddhist.

standard of living. That was the principal reason the income tax rates in the United Kingdom were very much higher than the graduated rates of 3% to 30% in Singapore and the Federation of Malaya.⁴⁶⁸ Some of the unofficial members disagreed with the view of the government that the figures presented were based on an unfair comparative cost of living, such as comparing India and Ceylon with Singapore. Finally, the motion was agreed with minor amendments.⁴⁶⁹

By the end of 1953, tax policy took rather different directions. The Income Tax Ordinance was proposed for several principal amendments in accordance with the recommendations made by the Malayan Board of Income Tax. The amendments in the bill were divided into three broad categories:⁴⁷⁰

1. To expand concessions where it was thought right to do so, such as to encourage new industries,
2. To clarify interpretation, remove anomalies and simplify tax working procedures,
3. To tighten up the law against tax evasion.

⁴⁶⁸ *ANM/KL Spore 27*: LCP, 20th October, 1953, pp. B330-B331, "Income Tax Deductions (Personal Allowances)". Calculations of Income Tax in Singapore, Federation of Malaya and United Kingdom (For the purpose of comparative simplicity, insurance rebates, which were also limited in both territories, were excluded in arriving at the Income Tax payable):

Gross Income (\$)	Singapore & Federation of Malaya (\$)	United Kingdom (\$)
6000	Not taxable	634
12000	395	3265
24000	2180	9420
100000	21755	67542

⁴⁶⁹ *ANM/KL Spore 27*: LCP, 20th October, 1953, pp. B334-B335, "Income Tax Deductions (Personal Allowances)".

⁴⁷⁰ *ANM/KL Spore 27*: LCP, 20th October, 1953, p. B337, "Income Tax Deductions (Personal Allowances)". The last category of amendments had aroused a considerable amount of controversy over the stringency of the proposed amendments. As a result, the government intended to submit it to the Select Committee before it was tabled for the second reading.

In 1951, 6% of the total number of persons assessed were recipients of 34% of the total income assessed. The corresponding figures for 1952 were 8% and 40% respectively. These were omens of what the future would hold for individual relations and social and political tranquility. Many experts had visited Malaya in the same year and each team of experts had studied a different problem. The government expected to appoint a Royal Commission to survey the social, economic, political and educational problems and to suggest constructive measures for their solution.⁴⁷¹

⁴⁷¹*ANM/KL Spore 27*: LCP, 12th October, 1954, p. B308.

Chapter Four

The Development of Religious Taxation

Chapter 4

Development of Religious Taxes in the Malay Peninsula

Introduction: Advent of Islam to the Malay Peninsula

The correct date of the advent of Islam to the Malay Peninsula is still very much disputed by prominent scholars and historians with regard to the bearers and agents of Islam; theories on the spread, propagation and assimilation of the new faith were thought catalysed by Indian, Arab, Persian, and Chinese origins. For instance, Snouck Hurgronje firmly advocates that Islam came from India whilst S.Q. Fatimi is the leader of those people who advocate that Islam first came from China via the east coast of the Malay Peninsula. According to Syed Naguib al-Attas, several theories on the introduction and expansion of Islam were advanced giving emphasis particularly to the dominant role of:⁴⁷²

- a) trade where propagation of Islam was a secondary element for the traders. Officials of the court were actively involved in business transactions, and intermarriages led to the spreading of Islam which subsequently affected conversion of the Rulers and the courts, and among the native inhabitants;

⁴⁷² Ahmad Ibrahim, Ahilemah Joned; *The Malaysian Legal System*; S.Q. Fatimi; *Islam comes to Malaysia* (M.S.R.I, Singapore, 1963); M.A. Rauf, *A Brief History of Islam--with special reference to Malaya* (Oxford University Press, Kuala Lumpur, 1964); Cesar Adib Majul, "Theories of the Introduction and Expansion of Islam in Malaysia", *Silliman Journal*, Vol. xi, 4th Quarter, 1964 (Silliman University, Dunaguete City, Philippines, Quezon City) pp. 346-395; S.M. Naquib al-Attas, *Preliminary Statement on a General Theory of the Islamization of the Malay-Indonesian Archipelago* (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1969) pp. 18, 25-29; S.M. Naquib al-Attas, *Islam Dalam Sejarah dan Kebudayaan Melayu* (Angkatan Belia Islam Malaysia [Abim], Petaling Jaya, 1990); G.R. Tibbetts, "Early Muslim Traders in South-East Asia", *JMBRAS*, Part 1, Vol. xxx, 1957; Gordon P. Means, "The role of Islam in the Political Development in Malaysia, *Comparative Politics*, Vol. I, No. 2, 2nd January, 1969; Abdullah Ishak, *Islam di Nusantara (Khususnya di Tanah Melayu)* (BHEIS Jabatan Perdana Menteri, Kuala Lumpur, 1992) pp. 55-70; R.A. Blasdell, "How Islam Came to the Malay Peninsula," in *MW*, Vol. XXXII, April 1942, pp. 114-12; Syed Farid Alatas, "Notes on Various Theories Regarding the Islamization of the Malay Archipelago," in *MW*, Vol. LXXV, October 1985; Cesar Adib Majul, *Muslims in the Philippines* (The University of Philippines Press, Quezon City, 1973); Che Omar bin Haji Awang, *The Methodology of Teaching in Islam with Special Reference to the Traditional Educational Methods in Malaysia* (Unpublished Thesis, University of Edinburgh, 1996), p. 190.

- b) political conveniences as the motive for the mass conversion to Islam;
- c) Islam's ideological worth as being the main thrust for conversion;

Until 1969, the latest platform, championed by S.M. Naquib al-Attas, who rebutted all the aforementioned theories collectively on the ground that these theories were based on guesswork and had been critically demonstrated untenable, contended that Islam came to the Archipelago couched in Sufi metaphysics originating from Arabia and Persia. In contrast to S.M. Naquib al-Attas' postulates, C. A. Majul believes that all above theories are supported by historical facts, albeit selective ones; in spite of their limitations, they possess partial validity if interpreted as general theories. He further reiterated that while it is difficult to point out theoretical inconsistencies, it is possible to demonstrate their complementary elements. He even contemplates that complete truth is found in a judicious synthesis of all the theories.⁴⁷³

Whatever the outcomes of the aforementioned theories, which are beyond the scope of this inquiry, current evidence in Malaysia has shown that the advent and spread of Islam had undoubtedly resulted in metamorphosis of the culture, social and political thought of its native inhabitants with the mass conversion of the Malays.⁴⁷⁴ Theory put forward by Gordon P. Means that Islam did not displace existing political and social elites or challenge too many existing social values and practices which had an association with animist-Hindu-Buddhist elements were refuted by S.M. Naquib al-Attas who argued that the philosophical influence of Hinduism upon the Malay-Indonesian

⁴⁷³S.M. Naquib al-Attas, *Preliminary Statement*, pp. 5, 18-19. Other supporters of his theory, coincidentally all Asians, are Hamka, Haji Abu Bakar Aceh, S. Ibrahim Buchari, Agus Salim and Cesar Adib Majul, cited in Che Omar bin Haji Awang, *op. cit.*, pp. 188-190. For a detailed account on Malay sufism, see A.H. Johns, "Malay Sufism as illustrated in an anonymous collection of 17th century tracts", *JMBRAS*, Vol. xxx, Part 2, 1957, pp. 5-35; Cesar Adib Majul, *op. cit.*, p. 395.

⁴⁷⁴Muhammad 'Uthmān el-Muḥammady, *Memahami Islam: Insan, Ilmu dan Kebudayaan* (Pustaka Aman press, Kota Baru, 1932), p. 190; Abdul Rahman Haji Abdullah, *Islam Dalam Sejarah Asia Tenggara Tradisional* (Penerbitan Pena Sdn. Bhd, Kuala Lumpur, 1989), Chapters 9, 10, and 11, all cited in Che Omar bin Haji Awang, *op. cit.*, p.191; S.Q. Fatimi, *op. cit.*, pp. 69-71, 78-87; M.A. Rauf, *op. cit.*, pp. 81-85; Muhammad Saleem Ahmad, "Islam in Southeast Asia: A Study of the Emergence and Growth in Malaysia and Indonesia", *JIS*, Pt. 19, Vol. XIX, 1980, pp. 134-141.

world view had been unduly magnified and had no firm basis.⁴⁷⁵ S.M. Naquib al-Attas further contended that serious theories on the spread of Islam promulgated by Schricke who postulates the crusader theory and Van Leur who postulates the trade theory (coexistence between Islam and trade), and the manner which Schricke compared it with the spread of Hinduism, cannot be regarded as tenable.⁴⁷⁶

Two monuments with Arabic inscriptions, found at the northernmost tip of the Malaysian world in the South of Champa, a land which once belonged to the Chams, an ancient people of the Malayo-Polynesian race, who are mostly Muslims and had a matrilineal society and very close ethnological, linguistic, cultural and historical ties with the Malays of the Malay peninsula and the Archipelago, appear to be related to the process of assimilation of Islamic laws to Malay society.⁴⁷⁷ One of these monuments, is a gravestone having an Arabic inscription in the *Kūfī* script and is dated 1039 A.D. The other one is a very mutilated piece of what must have been a pillar with an inscription laying down regulations for the payment of taxes, settlement of debts, etc. However, it is not clear whether the inscription on the second monument describing “payment of taxes” connotes regulations on *zakat*,⁴⁷⁸ or other forms of Islamic taxes such as *kharāj*, *jizyah*, and *ushr*, due to the fact that a dominant secular revenue system had existed in the Malay Sultanate during that period. The prevailing dominant revenue system of the Malay Sultanate, discussed above (Chapter 2) was perhaps the main

⁴⁷⁵Gordon P. Means, *op. cit.*, pp. 266-267. Cf. S.M. Naquib al-Attas, *Preliminary Statement*, pp. 2-3.

⁴⁷⁶B. Schricke, *Indonesian Sociological Studies*, 2 pts, The Hague, 1955-1957, pt. I, Chapter I to III (The Shifts in Political and Economic Power in the Indonesian Archipelago in the Sixteenth and Seventeenth Century); pt.2, *Appendix Two* (The Rise of Islam and the Beginnings of Hinduism in the Archipelago), cited in S.M. Naquib al-Attas, *Preliminary Statement*, pp. 4-5; J. C. van Leur, *Indonesian Trade and Society*, The Hague, 1955, Chapter I to IV (On Early Asian Trade) and Chapters I to III (On the Study of Indonesian History), See also Cesar Adib Majul, *op. cit.*, pp. 387-395 on the account on the crusader theory. See also Syed Hussein al-Attas, “Reconstruction of Malaysian History”, *RSEA*, Part 3, 1962, pp. 225, 236-237.

⁴⁷⁷*Indo-Chine: a Geographical Appreciation*, Government of Canada, Foreign Geography Information Series, No. 6 (Ottawa, 1953) p. 27, cited in S.Q. Fatimi; *Islam comes to Malaysia* (M.S.R.I, Singapore, 1963), pp. 42-43.

⁴⁷⁸The term *zakat* has the same meaning as the term *zakāh* used in chapter 1.

contributory factor to the lack of development of the Islamic fiscal system.

The Trengganu stone inscription dated 702 A.H/1303 A.C.⁴⁷⁹ at Kuala Berang Trengganu, found in front of a *surau* (prayer building) where it formed the step on which worshipers washed their feet or performed ablution, is the earliest Malay text in the Arabic script, and appears to be the first contemporary record of the introduction of Islam into any state of the Malay peninsula. The inscription on the stone contains ten laws in a very fragmentary form of which the first three are missing and subsequent sections do not address taxation. It cannot be ruled out that the first three laws might have contained some regulations on religious taxes.⁴⁸⁰

Given a period of about 300 years lead time until 1511 to complete the process of Islamisation in the Malay peninsula, it is worth noting that subsequent development was primarily deterred by many dominant factors: the firm influence of Hinduism/Buddhism which was assimilated into the Malay customary laws, and above all, the prevailing secular fiscal system of the Malay Sultanate itself. It was true to some extent that Islamic law influenced and governed every aspect of the Malaccan administration but Islamic taxation was still in its infancy stage. The annihilation of Malacca in 1511 with the invasion of the Portuguese, followed by the Dutch in 1641 had

⁴⁷⁹S.M. Naquib al-Attas, *The Correct Date of the Trengganu Inscription* (Museum Negara, Kuala Lumpur, 1970), pp. 1-5; S.Q. Fatimi; *op. cit.*, pp. 60-61. Tuan Haji Buyung Adil, a prominent writer who could be deemed among the senior writers in Malaysia analyses the date of the inscription in *Sejarah Trengganu* (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1982), pp. 9-10, cited in Che Omar bin Haji Awang, *op. cit.*, p.193. The date inscribed was the month of "Rejab 702 Hijriyyah". According to his expert interpretation, "if the lunar is 702, it was in equivalence with 1303 A.D. Should any other number be taken into account other than 702, it could be any one of this series: 708, 712, 720 to 729 and 780 to 789 [since number 8 was pronounced as dua lapan (two eight) or delapan]. It is impossible that the number goes beyond that. The month of Rejab was in equivalence with February. Thus, it was February 1303. The year 789 Hijriyyah therefore, is equivalent with 1387. Based on this analysis we could deduce our result here that the stone was inscribed in Rejab 702/February 1303 or others in the series mentioned but it could not go beyond 789/February 1387".

⁴⁸⁰S.Q. Fatimi; *op. cit.*, pp. 60-61. The first three laws are missing, the 4th appears to deal with relations of creditor and debtor, while the 6th relates to family law, the seventh appears to deal with some special case of wantoness on the part of women, the 8th deals with false evidence, the 9th deals with provision for punishment in default of payment of a fine, and finally the concluding section makes obedience to all these codes binding on all residents of that state.

inevitably hindered the development of Islamic laws. The brutal Portuguese campaign against Islam was welcomed by a massive exodus of Muslim merchants from Malacca to Aceh, Bantam and Brunei and a similar movement of Chinese traders to Patani. The aftermath of these events was able to impoverish significantly the royal exchequer. An attempt to block the exodus was forestalled by the rising power of Islam in Java in 1526.⁴⁸¹ In the early 19th century, development was further hampered by the state of anarchy, violence and squabbles between the Malay chiefs and Malay royal families.⁴⁸²

Revival of the Development of the Islamic Law

In a process marked by slow but inexorable historical factors, attempts were made to adopt Islamic law and to modify Malay customs so as to make them conform with Islamic law. For instance, the *Undang-undang Melaka* consisting of two parts of 44 sections, the land law and the maritime law, later adopted by Pahang during the reign of Sultan 'Abd al-Ghafur Muhaiyu'd-din Shah (1592-1614 A.D.), basically dealt with spiritual, family and criminal offences, commercial transactions, land transactions and *wakafs*. The Pahang digest was modified with more application of Islamic law than the customary law. Para 58 deals with the regulations on the compulsion of zakat.⁴⁸³

⁴⁸¹Moshe Yegar in *Islam and Islamic Institutions in British Malaya* (The Magnes Press, Jerusalem, 1979) regarded Malacca as a "militant centre" for the spread and diffusion of Islam to other States in that region. See S.M.Naquib al-Attas; *Islam Dalam Sejarah dan Kebudayaan Melayu* who explored in depth the influence over religious, cultural and intellectual traditions of the Malays; D. K Bassett in an article on European Influence in the Malay Peninsula 1511-1786 (JMBRAS, vol. XXXIII Pt. 3, 1960) pp. 10-11 explained that their primary objective in the Indian Ocean was to impair Mohammedan power in the Mediterranean by diverting commerce that sustained it from the Red Sea and Persian Gulf and then monopolise it around the Cape of Good Hope. This objective was continued in their venture to Malacca and was declared to be "a crusade against the Mohammedan religion." [W. Makepeace, et. al., (gen.ed..) in *One Hundred Years of Singapore*, vol. I (London, 1921) p. 18]; "seeking to win souls for the Catholic faith" [R. Allen, *Malaysia, Prospect and Retrospect* (London, 1968) p. 20; "hate against the Muslims" [B. W. Andaya and L. Y. Andaya; *A History of Malaysia* (London, 1986) p. 56; their rule was imbued "with commercial and religious aggression" [Yegar, op.cit., p. 8]. See D. K Bassett, "European Influence in the Malay Peninsula 1511-1786", *JMBRAS*, Vol. XXXIII, Pt. 3, 1960, pp. 10-11.

⁴⁸²Moshe Yegar, *op. cit.*, pp. 24-25.

⁴⁸³Ahmad Ibrahim; *Islamic Law in Malaya* (MSRI, Singapore, 1958) p. 147, cited in Hamid Jusoh, *Al-Ahkam*, p. 63.; Liaw Yock Fang, (ed.); *Undang-undang Melaka* (The Hague: Martinus Nijhoff, 1976) pp. 34-45; Ahmad Ibrahim, Ahilemah Jones; *The Malaysian Legal System*, pp. 43-44; Hamid Jusoh; *Al-Ahkam*, pp. 63-66. Of the total 44 sections of the digest, none is touching any regulation on Islamic taxation. See also W.J. Drewes, "On a Recent Edition of the Undang-Undang Melaka", *JMBRAS*, Vol.

According to the late Haji Yusoff Harun, there was a manuscript called *Undang-undang Pebian Melaka* that contained the administration, regulations and system of customs, tax responsibility and power vested in the *Shahbandar Melaka*. The *Undang-undang Laut Melaka* (Maritime Law of Malacca), originally written by Maulana in 1083 Hijrah / 1672 A.D., was in fact drafted much earlier than *Undang-undang Melaka* due to the dependence of its economy on the port and sea.⁴⁸⁴ It seems that the application of Islamic Shari'ah Law with respect to treasure trove was partly codified in it as found in subsection III of the Maritime Laws of Malacca. Subsection 10 refers to payment of taxes: "...Countries levy taxes on the eight divisions of the hold. (In addition tolls are levied on other divisions: two sheets of cloth for topsails per division, or, in rattan, one bundle of rattan for every two clothes). A supercargo who pays harbour-dues does not have to pay tax". Subsection 13(b) also refers to taxes, "...A country at war can levy a toll from merchant vessels. The levying of this toll is comparable to the enforcing of a blockade by patrol-boats at sea, and the penalties are the same".⁴⁸⁵

It worth noting that the lack of emphasis found in many Malay digests such as that written by the famous Abdullah on zakat development suggests that the Malay Sultanate government in Malacca focussed more on the aspect of the development of the

53, Part 1, 1980, pp. 23-49; Abd. Jalil Borhan, "Kajian Teks Undang-undang Islam Terawal di Malaysia: Rujukan Kepada Undang-Undang Melaka dan Johor", *Jurnal Syariah*, Vol. 2, Pt. 2, July, 1994 (Fakulti Syariah, Akademi Islam, Universiti Malaya, Kuala Lumpur) pp. 112-131.; John E. Kempe, and Richard O. Winstedt, "A Malay Legal Digest of Pahang", *JMBRAS*, Vol. 21 Part 1 (1948) pp. 1-67; Ahmad Ibrahim, "Islamic Law in Malaysia", *JMCL.*, 1981, Vol. 8, p. 23; Hamid Jusoh, "Position of Islamic Law in the Malaysian (Federal) Constitution with Special Reference to the Conversion Cases in Family Law", LLM dissertation, University of Kent at Canterbury, England, 1985/86, p. 12, cited in Hamid Jusoh; *Al-Ahkam*, pp. 66-67.

⁴⁸⁴Source of interview Mohammad Yusof Hashim with the late Haji Yusoff Harun, Malacca on 12th June, 1982; and Mohd Yusoff Hashim, "Kesultanan Melayu Melaka", in *Historia* (by Muhammad Abu Bakar [ed.], Persatuan Sejarah Malaysia, 1984) p. 196, both cited in Abd. Jalil Borhan, *op. cit.*, p. 114. Cf. R.O., Winstedt and P.E. de Josselin de Jong, "The Maritime Laws of Malacca", *JMBRAS*, Vol. 29, Pt. III, Aug., 1956, p. 57.

⁴⁸⁵Mohd Yusoff Hashim, "Undang-undang Pada Masa Kesultanan Melaka 1400-1511", *Seminar Sejarah Melaka, Kerajaan Melaka*, 1986, p. 57, cited in Abd. Jalil Borhan, *op. cit.*, p. 114. See also R.O., Winstedt and Josselin de Jong, "The Maritime Laws of Malacca", *JMBRAS*, Vol. XXIX, Pt. III, 1956, pp. 28-49, 52, 54.

Islamic faith, inculcating it through prayers and other spiritual matters.⁴⁸⁶

The results of the diffusion of the Islamic law was not uniform throughout the Malay states. For instance, Islamic law was also enforced in Kedah but the extent of implementation was not as extensive in Malacca and Pahang. However, part of the Kedah digest did focus on regulations of the divine duty to pay zakat.⁴⁸⁷ In Kedah law of 1667, subsection three of chapter two of “Tembera Dato Seri Paduka Tuan (1078 S. H./ 1667 A. D.)” clearly shows that the zakat system had been imposed on the staple food of the Malays at that time, paddy, and administered by a tax collector who would calculate the tax liability of the farmers who were found reluctant to pay zakah.⁴⁸⁸

“Barangsiapa membuat bendang atau huma maka hendaklah kerasi suruh keluaran zakat seperti benar-benar hisabnya yang diperolehinya itu, suruh keluaran sepuluh emas zakatnya itu. Apabila tiada mahu mereka itu seperti hisab itu, maka hendaklah kweng kerasi keluaran zakat itu menurut seperti hukum Allah Ta’āla [Any person who works a paddy field (bendang) or engages in a “ladang cultivation (huma)” must be forced to pay zakat 10% of his gross harvest. If he disagrees with the assessment and refuses to pay the tax liability, the kweng (head of a village) must enforce the collection according to the Islamic law].

In Pahang, Sultan Mahyudin Shah enforced the collection of zakah between 1592 and 1614 A.H. The written digest suggests that the Malay Sultanate government of Pahang

⁴⁸⁶ Mohd Nor Ngah, “A Preliminary Study of the Institute of Zakat in Malaysia”, *Islamika*, Vol. III (Jabatan Pengajian Islam, Universiti Malaya, Kuala Lumpur, 1985) p. 226, cited in Mujaini Tarimin, *Sistem Zakat al-Māl al-Mustafād Dalam Syari’ah Islām: Satu Kajian kes Perlaksanaannya di Wilayah Persekutuan Kuala Lumpur*, (Unpublished Thesis, Universiti Malaya, Kuala Lumpur, 1995), p. 256.

⁴⁸⁷ R.O. Winstedt, “Kedah Law”, *JMBRAS*, Vol. 6, part 2, 1928, p. 8; Abdul Majeed Muhammad Mackeen, *Contemporary Islamic Legal Organisation in Malaya*, Monograph Serial No. 13. Connecticut: Yale University South-East Asia Studies, 1960, pp. 14-17. See also *Great Britain Commonwealth Relation Office, Kedah, Malay State*, Despatch No. 160 of 25.5 (Singapore Government House, 1918), cited in Hamid Jusoh in *Al-Ahkam*, *op. cit.*, p. 67.

⁴⁸⁸ R.O. Winstedt, “Kedah Law”, *JMBRAS*, Vol. 6, Part 2, 1928, p. 28. See also the same citation made by Mujaini Tarimin, *Zakat Pertanian--Sistem dan Perlaksanaannya* (DBP, Kuala Lumpur, 1990) p. 54. W. E. Maxwell gave the word “huma” meaning “ladang cultivation”, a sort of a hill-farm system, widely practised by numerous Malays and Indo-Chinese tribes. See W.E. Maxwell, “Malay Land Tenure”, *JMBRAS*, June, 1884, p. 81.

imposed a penalty on failure to pay zakat.⁴⁸⁹

“Bermula mereka yang tidak mahu memberi zakat atau segala hak Allāh Ta’ālā atasnya tidak diberinya, jika ia hendak berperang mengerasi diberinya, kita kerasi dengan perang, barang binasa dari hartanya atau mati padahal itu binasa tiada menyilih jika menurut kata pada hal itu binasa hartanya hendaklah disilih [Any person who refuses to pay his zakat or all that belonging to Allah must be confronted with war even to the extent leading to his death or to the extent of destroying his property].

The zakat laws formulated in the Kedah and Pahang digests, which had provisions to take legal action against zakat defaulters, appear to be in concordance with the traditions of the Prophet and Abū Bakr. In this respect, the Prophet on numerous occasions had prescribed that the canonical obligation of zakat has equal significance to prayer.⁴⁹⁰ A Ḥadīth narrated by Abū Huraira undoubtedly corresponds to the revelations and Ḥadīths mentioned. Abū Bakr is reported to have said, “By Allāh!, I will fight those who differentiate between the prayer and the *zakat* as *zakat* is the compulsory right to be taken from the property”. Then ‘Umar, who concurred with Abū Bakr’s statement, said, “By Allāh, it was nothing but Allāh opened Abu Bakr’s chest towards the decision (to fight) and I came to know that his decision was right”.⁴⁹¹

Similarly, the *Undang-undang 99 of Perak* was probably an extension of the

⁴⁸⁹ John E. Kempe and Richard O. Winstedt, “A Malay Legal Digest”, *JMBRAS*, Vol. XXI, Part I, 1948, p. 53, cited in Mujaini Tarimin, *Sistem Zakat al-Māl al-Mustafād Dalam Syari’ah Islām: Satu Kajian kes Perlaksanaannya di Wilayah Persekutuan Kuala Lumpur*, (Unpublished Thesis, Universiti Malaya, Kuala Lumpur, 1995), p. 257; Mujaini Tarimin, *Zakat Pertanian--Sistem dan Perlaksanaannya* (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1990) p. 54.

⁴⁹⁰ The Prophet, in response to a question regarding a deed that would allow a Muslim to enter Paradise, said, “....offer prayers perfectly and pay the zakat.....”. Al-Bukhārī; *Ṣaḥīḥ al-Bukhārī*, vol. II, pp. 271-274.

⁴⁹¹ This statement was made in conjunction with an incident, where some of the ‘Arabs apostasised (reverted to disbelief) shortly after the Prophet demise. Al-Bukhārī; *Ṣaḥīḥ al-Bukhārī*, vol. II, p. 274.

Undang-undang Melaka, and Kelantan,⁴⁹² Trengganu⁴⁹³ had similar digests. The codification of Islamic law was also extended to the other Malay States; the *Ahkam Shariyyah Johor of 1949*⁴⁹⁴ was adapted and translated from the *Ḥanafite Code of Qadri Pasha* of Turkey and the *Majallat-Al Ahkam* was translated as *Majallah Ahkam Johor* dated 1331 A.H.; and the *Constitution of Trengganu* promulgated in 1911. An earlier law relating to the constitution of the courts issued in 1885 also appears to provide for the administration of Islamic law in Trengganu.⁴⁹⁵ However, all the aforementioned laws lack any emphasis on Islamic fiscal and tax doctrine.

⁴⁹²W.R. Roff, "The Origins And Early Years of the Majlis Ugama" in *Kelantan--Religion, Society and Politics in a Malay State*, (Oxford University Press, New York, 1974) p. 108; Hamid Jusoh in *Al-Ahkam*, p. 67.

⁴⁹³(Federal) Laws, Statutes: *Undang-undang Kerajaan Trengganu, 1911* (in Jawi). See also J. de V. Allen, Stockwell, and L.R. Wright, (ed), *A Collection of Treaties and Other Documents Affecting the State of Malaysia: 1761-1963* (New York Occana Publication, 1981) Vol. 1, pp. 474-491, cited in Hamid Jusoh in *Al-Ahkam*, p. 67.

⁴⁹⁴*Ahkam Shariyyah Johore*, Johore: [Jawi version], 2nd ed. (Jabatan Agama Johor, Johor Bharu, 13th November, 1935). See also *Ahkam Shariyyah Johore*, Johore, 1949 and Hapipah Monel; "Pentadbiran Undang-undang Islam Johor" [The Administration of Muslim Law in Johore], Project paper, Faculty of Law, University of Malaya 1979/80, both cited by Ahmad Ibrahim, Ahilemah Joned; *The Malaysian Legal System*, p. 44. For instance "Perlembagaan Johor of 1895 was first enforced on the 14th September, 1895. See Ahmad Ibrahim; "Islamic Law in Malaysia", *JMCL.*, 1981, Vol. 8, p. 23; Allen, J. de Vere, et.al (ed), *op. cit.*, pp. 77-101, cited in Hamid Jusoh; in *Al-Ahkam*, p. 67.

⁴⁹⁵*Majallah Ahkam Johore*, 1331 A.H., cited in Ahmad Ibrahim, Ahilemah Joned; *The Malaysian Legal System*, p. 44. In 1895, a constitution was drafted for Johore and this, while showing the influence of its drafting by English lawyers, reveals some influences of Islamic law. See also laws of the Constitution of Johore, *Malayan Constitution Documents*, Vol. 2; Laws of the Constitution of Trengganu, *Malayan Constitution Documents*, Vol. 2; *Undang-undang Mahkamah, Trengganu, 1885*; Project Paper, Faculty of Law, University of Malaya, 1978/79, cited in Ahmad Ibrahim, Ahilemah Joned, *op.cit.*, pp. 44-45. See Zubir Embong, "Sejarah Undang-undang dan Kehakiman Islam Trengganu Sebelum Campur Tangan Inggeris", [The History of the Islamic Law and Judiciary Prior to the British Intervention].; (Federal) Laws, Statutes: *Undang-undang Kerajaan Trengganu, 1911* (in Jawi). See also Allen, J. de V., Stockwell, and Wright, L.R., (ed), *A Collection of Treaties and Other Documents Affecting the State of Malaysia: 1761-1963* (New York Occana Publication, 1981) Vol. 1, pp. 474-491, cited in Hamid Jusoh in *Al-Ahkam*, p. 67.

Structure of Religious Institution in Precolonial Malaya

In pre-colonial Malaya, Islam had not been institutionalised as the national religion: the only religious institutions were primarily local in character with each *kampung* (village) maintaining its own *masjid* (mosque) or a *surau* (prayer house) depending on its dwelling size and economic wealth. Each *kampung* was largely self-sufficient in sustaining its religious needs which were derived through respective villagers' donations of services or goods and by the traditional obligatory Islamic taxes *zakat* which was primarily limited to agriculture, and the annual payment of *fitrah*.⁴⁹⁶

Even though records on how *zakat* and *fitrah* were administered in the Malay Peninsula during six centuries since the advent of Islam are patchy, observations made by W.E. Maxwell and the Governor of the Straits Settlements, Fullerton, may suggest that the Malay rulers in Perak and Malacca at that time had imposed a one-tenth tax on agriculture produce which in Islamic law connotes 'ushr or *zakat* on agriculture. Fullerton, in 1828, stated that:⁴⁹⁷

“Following in this respect the General Muhammadan Law at least in part, the ancient Javanese sovereigns used to pay their functionaries and shew favour to their relations and favourites, not with hard cash but by a delegation of sovereign rights consisting in the right to exact a share of the produce of the soil from one to four-tenths...”

Maxwell observed that this practice of paying a percentage of the crop, which was not uniformly exacted in all of the Malay states, gradually died out as the British took over the revenue system of the Malay Sultanate.⁴⁹⁸ Maxwell's claim that the tax was fixed by Malay custom at one-tenth brought him into polemical debate with Frank Swettenham who disputed the existence of such a Malay custom. Maxwell reported that

⁴⁹⁶Gordon P. Means, “The role of Islam in the Political Development in Malaysia, *Comparative Politics*, Vol. I, No. 2, 2nd January, 1969, pp. 268-269.

⁴⁹⁷W.E. Maxwell, “Malay Land Tenure”, *JMBRAS*, June, 1884, pp. 94-95; Abdul Aziz Mohd Yassin, *Zakat--A Perspective on its Origin and Place in Malay Society* (Academic Exercise, University of Singapore, 1957) p. 10.

⁴⁹⁸W.E. Maxwell, *op.cit.*, p. 11.

apart from earlier documentation by T. J. Newbold on the imposition and collection of the tithes in Malacca, he was not aware of its practice in Negeri Sembilan. However, he testified having personally seen the enforcement of the tithes by native government in the “only pure Malay province” of Krian in Perak in 1874.⁴⁹⁹ Although Maxwell did not specifically state that what the rulers exacted from the farmers was Islamic zakat, the portion exacted of one-tenth (tithe) agricultural produce appears to connote zakat principles in Islamic law.⁵⁰⁰

As been discussed aforementioned in this Chapter, attempts to assimilate Islamic culture and laws in government had been quite successful. Contrary to J.M.Gullick's hypothesis that “..There was no *Kathi* (an Islamic judge) until the era of British protection.....Perak had its first Chief Kathi in 1880 and Selangor in 1885 and neither was a member of the old ruling class”, *Kathi* at state level were employed at the royal courts and central Islamic institutions were maintained at the capital to act as a centre for religious activities or observance within the state. Gullick's hypothesis was refuted by Mackeen who found that the process of Islamising existing customary institutions was closely allied with the rise of two important legal functionaries, namely, the *Kathi* and the *Mufti* [an expert in Islamic law who issues authoritative statements and *fatwa* (opinions) concerning the law]. For instance in Kelantan, W. R. Roff reported that there was evidence that at least by 1830s (and presumably much earlier) both important positions of Mufti and Kathi had existed in the machinery of the government.⁵⁰¹

⁴⁹⁹T.J. Newbold, *Political and Statistical Account of the British Settlement in the Straits of Malacca*, Vol. I, (John Murray, Albermarle Street, London, 1839), Chapter IV--Revenue (Tenth on land produce) pp. 160-165; Ahmad Shah Mohd Noor, *Land Rent Revenue Administration in Peninsula Malaysia: A survey on Some Socio-Legal and Administrative Issues from a Local Muslim Perspaective* (Unpublished Thesis, University of Edinburgh, 1995) pp. 82-83.

⁵⁰⁰See discussion in Chapter 1 on 5% and 10% tax rates imposed on agriculture produce.

⁵⁰¹J.M. Gullick, *Indigenous Political Systems of Western Malaya* (London, 1958), p. 139; Gordon P. Means, *op.cit.*, p. 269; W.R. Roff, *Origins*, p. 106; Abdul Majeed Muhammad Mackeen, *Contemporary Islamic Legal Organisation in Malaya*, Monograph Serial No. 13. Connecticut: Yale University South-East Asia Studies, 1960, pp. 14-17.

In the early part of the 20th century, absolute authority outside the state capital, as in Kelantan for example, was for practical purposes largely exercised by the *Imam* of the village *surau*.⁵⁰² This was also generally true for other Malay states. The *surau* and the *masjid* were deemed the ritual centre of rural Islam, and acted administratively as the collection and disbursement centre for zakat. In this connection, the *Imam* appears to have had general administrative oversight, including the alienation of land, and most importantly the supervision of produce taxes, and assessment and collection of the triennial *banchi* or poll tax. The costs such as up keeping of the ritual centre and salary of the officials of the centre were partially financed by revenue generated through the collection of zakat and fitrah. The payment were surrendered to the *Imam Besar* by the peasants.⁵⁰³

⁵⁰²W.A. Graham, *Report on the State of Kelantan for the year August 1903, to August, 1904* (Government Printer, Bangkok) p. 16, cited in W.R. Roff, *op.cit.*, p. 104.

⁵⁰³W.R., *Origins*, pp. 104-105. It was not clear on whether the poll-tax referred to here by W.R. Roff was actually a kind of Islamic tax called *jizyah* which was imposed on all non-Muslim adult males or secular poll-tax which was imposed on individual persons.

Institutionalisation of “Majlis Ugama Islam Negeri (MAIN)”

As a result of the 1874 Pangkor Engagement and its successor, a restructuring of Islamic religious institutions was inescapable in the Malay states. Moshe Yegar concludes that the constitutional and administrative changes made by the British administration reflected the urge to assert Western concepts such as the written constitutions in Johore and Trengganu, codification of the unwritten adat and the Shari’ah and modern legislation on religious matters.⁵⁰⁴ For instance, on 17th December, 1887, after a similar treaty had been signed in Pahang, Hugh Clifford suggested, amongst other things, the introduction of a code of laws based on the English or Johore model modified to suit local conditions.⁵⁰⁵

In the classical case of Kelantan, the state was forced to sign a treaty with Britain in 1910 after the Siamese government had transferred “all rights to suzerainty, protection, administration and control whatsoever they possessed over Kelantan,

⁵⁰⁴Moshe Yegar, “The Development of Islamic Institutional Structure in Malaya, 1874-1941--The Impact of British Administrative Reforms”, *Islam in Asia*, Vol. II, ed. by Raphael Israeli and Anthony H. Johns (The Harry S. Truman Research Institute for the Advancement of Peace, The Hebrew University, Jerusalem, 1984) p. 193. W.R. Roff, during a discussion with the researcher on 27th January, 1998, refuted Moshe Yegar’s hypothesis, arguing that Yegar’s hypothesis is too strong. However, Yegar, in his earlier published thesis, quoted a reference from a 1901 correspondent reported from Pahang on the urge to implement some sort of Islamic legal reform based on Western-style precepts by the native Malays soon after the British started their legal reform in Malaya:

“...a short Muhammadan code is badly wanted. Under present circumstances each illiterate Kathi is a law unto himself and dispenses a most extraordinary kind of justice to those who go to him for assistance. Then, should there be an appeal, the Higher Court has no actual law to go upon. The Malay priesthood is saturated with custom and superstition too often to the ousting of the actual law of the prophet, that it is often impossible to ascertain what is the true Muhammadan law; indeed, the priest in the majority of cases does not know the real law. How far Indian Muhammadan Law holds good in the Peninsula, I cannot say.....But it seems time that some sort of procedure was laid down for the guidance of European majistrates when hearing cases involving the native religious law, for it is obviously ridiculous to rely upon the advice and opinion of the ignorant and superstitious priesthood of the country.....*Pinang Gazette and Straits Chronicle*, 7th September, 1901 (Muhammadan Civil Code”.

See Moshe Yegar; *Islam and Islamic Institutions in British Malaya--Policies and Implementation*, pp. 192. W. R. Roff was correct in postulating that the religious reform was initiated by the awareness of the Malays that finally dictated the striking lead to assert Western’s written concepts. In the case of Kelantan and Trengganu, the Residents assisted in its implementation. Otherwise, he added, other Malay states would have similar constitutions and laws if the British Colonial Administration as an organisation was officially involved.

⁵⁰⁵W. Linehan, “A History of Pahang”, *JMBRAS*, Vol. XIV, Part II, 1936, p. 118.

Trengganu, Kedah, Perlis and adjacent islands” to Britain. As with the Pangkor Engagement of 1874, a standard clause under Article 11 was inserted in the 1910 treaty which stipulated that the Sultan of Kelantan must (shall) receive a British Adviser, responsible only to the High Commissioner for the Malay States residing in Singapore, “whose advice he undertakes to follow in all matters of administration other than those touching the Muhammadan religion and local Malay custom”.⁵⁰⁶ Kelantan’s desire to implement the “ḥudūd law”⁵⁰⁷ at this time was impeded when the British adviser commented that a general agreement was essential in the spirit of moderation and co-operation:

“Such penalties as for instance the cutting off of the right hand of a thief or the stoning of guilty parties taken in adultery correspond to the circumstances of a different age and a different civilisation and a system of tithe based on the date crop of Arabia requires interpretation to adopt it to the needs of other countries”.⁵⁰⁸

Deprived of substantial legislative and political power in other areas, especially on the power to levy taxes for their own financial needs and given the vague definition of “Malay Custom” compounded by the policy of passive protection of Islam and non-

⁵⁰⁶Annual Report, Kelantan, 1934, pp. 3-4, ANM/KL/D/SUK2.

⁵⁰⁷The word “ḥudūd (حد , plural حدود)” is mentioned 13 times in al-Qur’ān (al-Baqarah, an-Nisā, at-Tauba, al-Mujadila, and at-Talaq), literally means “divine ordinance, divine statute, legal punishment”. In Islamic canon law, it refers to the undisputed law of Allāh as had been ordained in al-Qur’ān. Under the Islamic Criminal Law, crimes involving ḥudūd are clearly determined and can be categorised into seven categories: adultery, false allegation of adultery, drinking, theft, bloodshed and pluner, apostasy, and rebellion. For instance, theft is punishable by amputation if all conditions and evidences are duly satisfied. See Mahiudin Abu Zakaria Yahya Ibn Sharif En Nawawi, English translation from French by E.C.Howard, *Minhaj Et Talibin--A Manual of Muhammadan Law According to the School of Shāfi’ī*, (Law Publishing Company, Lahore, n.d), Chapter 54 on “Crimes Punishable with Amputation”, pp. 443-448; Hans Wehr, *A Dictionary of Modern Written Arabic*, ed. J. Milton Cowan, (Spoken Language Services, Inc, New York, 1976) p. 159; ‘Abdul Qādir Audah, *Tashrīf Jinā’i al-Islāmī*, English transl. S. Zakir Aijaz (International Islamic Publisher, New Delhi, 1991) Vol. I, pp. 84-86; Abu al-Hassan ‘Ali ibn Muhammad ibn Habib al-Basri al-Baghdadi al-Mawardi, *al-Ahkam al-Sultaniyyah*, English transl. Asadullah Yate (Ta-Ha Publishers Ltd, London, 1996), Chapter 19-Rulings Governing criminal Actions, pp. 309-336. For further detailed accounts of sentencing in Islamic law, see Hashim bin Mehat, *Malaysian law and Islamic Law on Sentencing* (International law Book Services, Kuala Lumpur, 1991). See also Suzana Hussin, *Kanun Jenayah Syariah (II) Kelantan--Satu Analisa*, Academic Exercise submitted to the Law Faculty, University of Malaya, Kuala Lumpur, 1994/95.

⁵⁰⁸Annual Report, Kelantan, 1934, p. 77, ANM/KL/D/SUK2.

interference in Islamic affairs by the British colonial administration, the role of the Malay Ruler as the protector of "Malay Religion and Custom" became more significant. Gradually, as Islamic rituals at the Malay courts became important, the Rulers and their respective State Councils began to assume greater responsibility for religious affairs. As a result of this shift of attitude and awareness, after 1884, various Malay states began to create for the first time a sort of centralised administrative structure and Islamic legal system for Muslim affairs.⁵⁰⁹

Surprisingly, it was Kelantan, an unfederated Malay State, which initiated the first move. The idea for the establishment of a centralised form of religious institution in Kelantan was first mooted in 1915 where on 7th December, 1915, the Kelantan State Council resolved upon the creation, "for the people of the state", of a *Majlis Ugama dan Isti'adat Melayu* (Council of Religion and Malay Custom).⁵¹⁰ Even though by 24th December, 1915 the objectives of the *Majlis Ugama* lacked details about the precise tasks of the Majlis, this did not prevent the holding of a series of extremely productive meetings during the early part of 1916.⁵¹¹ Subsequently, in October, 1916, the State Council passed the *Undang-undang bagi Anggota Majlis Ugama Islam dan Istiadat Melayu Kelantan* through Enactment No. 14 of 1916.⁵¹² The *Majlis Ugama* also

⁵⁰⁹W.R. Roff, *Origins*, pp. 67-74; Ahmad Ibrahim, *Islamic Law in Malaysia* (Singapore, 1965), cited in Gordon P. Means, *op.cit.* Ahmad Ibrahim gives a through account of substantive Muslim law in Malaya but provides practically no account of the bureaucratic and judicial structure created to administer these laws.

⁵¹⁰Extract from Minutes of the State Council, 7/12/15, enclosed in Kel.M.239/1916, cited in W.R. Roff, *Origins*, p. 101. The *Majlis Ugama Kelantan* was not a government department and not in any way subsidised by the government. Its creation, similar to the creation of Kelantan's Municipalities, was conferred a Charter by the Sultan of Kelantan. Cf. "Tujuan di lembagakan Majlis Ugama pada 24/12/1915" enclosed in ANM/KL/Record of "Majlis Ugama Islam Kelantan" No. 501/1953; "Vice-President of Ugama Islam Kelantan to President of Majlis Ugama Islam Perak, 27/1/51", ANM/KL/PK. Rel. Dept No. 165/49, Religious Department of Perak.

⁵¹¹However, some of the Council members expressed their uneasiness about the undefined nature of their tasks which might exceed the provisions of the Shari'ah. See Kel. PB.14/1916 containing a copy of the original complaint, and further correspondence, cited in W.R. Roff, *op.cit.*, pp. 101-102.

⁵¹²W.R. Roff, *op.cit.*, pp. 102-103. The Rules contains 28 sections. Four of the sections dealt with the powers vested and duties of the Majlis itself in considerable generality whilst section 24 empowered the Majlis to regulate all matters concerning mosques and surau in the state. Perhaps the most important is

supervised Muslim cemeteries and the administration of zakat was put on a proper footing to assist the Majlis financially. In essence with the spirit of the 1910 treaty and as the religious revenue grew, the collection was banked for the first time from 21st November, 1921, with the Mercantile Bank in Kota Bharu.⁵¹³ Managed and audited by the British Adviser's office, the revenue of the Majlis from zakat padi and fitrah rose steadily from 1916 to 1926.⁵¹⁴ By 1918, the Majlis, supported by a strong growth in revenue, continued its programme of superintending the collection of zakah padi and fitrah, and controlling the mosques and suraus throughout the State.⁵¹⁵ Confident of its revenue generation from zakat and a small contribution from the public, the State Mosque was built in Kota Bharu under the administrative control of the British

section 26 which deals with financial statement of the Majlis, followed by annual report under section 27 to be submitted to the State Council. Cf. Moshe Yegar, *op.cit.*, p. 75.

⁵¹³Kelantan Enactment No. 23 of 1938, "to repeal and re-enact the law relating to the Majlis Ugama Islam dan Istiadat Melayu, and Religious Funds" cited in Moshe Yegar, *op.cit.*, pp. 75-76; Administration Report, Kelantan, 1918, pp. 13, Appendix A; 1921, pp. 20, Appendix A enclosed in ANM/KL/D/SUK2.

⁵¹⁴Statement of Revenue mainly generated from zakat padi, fitrah and Baitulmal, and Expenditure of the Majlis Ugama Islam Kelantan, enclosed in ANM/KL/Record of "Majlis Ugama Islam Kelantan" in file 57/1927:

Year of Collection	Revenue (\$)	Expenditure (\$)
1916	12469	5596
1917	32277	18881
1918	34705	23544
1919	81143	58324
1920	68477	54997
1921	54897	79953
1922	35230	74248
1923	41704	59410
1924	78264	79143
1925	106400	99619
1926	60000	56396

Cf. Administration Report, Kelantan, 1921, p. 20, ANM/KL/D/SUK2.

⁵¹⁵Administration Report, Kelantan, 1918, p. 13, ANM/KL/D/SUK2.

Adviser's office.⁵¹⁶

Since its inception, the running of the Majlis had been in close contact with the British Adviser's office. As a result of Kelantan's desire to implement the *hudūd* law, not agreed upon by the colonial administration, the British Adviser's office in 1926 tried to formulate Western style legislation to be passed by the State Council, dealing with the carrying out of Islamic law to repeal various Notices.⁵¹⁷ Eight years later in August, 1934, a committee consisting of the British Legal Adviser as executive chairman, the Deputy Menteri Besar, and the Mufti Kelantan appointed by the Sultan of Kelantan was able to draw up legislation. After considerable bills were drafted, it finally split up into four important enactments and rules governing it:⁵¹⁸

- (a) Small Offences against Muhammadan Law
- (b) Muslim Marriage and Divorce
- (c) The Department of Religious Affairs and Charitable Funds, and
- (d) Mosques.

Associated rules, drawn up with an emphasis on strengthening and normalising the revenue of the Majlis, included:

- (a) Conversion to Islam Rules
- (b) Tithe Rules
- (c) Zakat Rules (Padi only), and
- (d) Majlis Ugama Administration Rules

It appears that the enactments and rules (first drafted in English language followed by translation to Malay in Jawi and Rumi) being successfully gazetted under the mechanism of the State Council had certainly led to the demise of *hudūd* law in Kelantan. The

⁵¹⁶Kelantan Administration Report, 1925, ANM/KL/D/SUK2; "Vice-President of Ugama Islam Kelantan to President of Majlis Ugama Islam Perak, 27/1/51", ANM/KL/PK. Rel. Dept No. 165/49.

⁵¹⁷These Notices which deal with certain aspects of the Islamic law were not printed and circulated because it were deemed mostly unascertainable to the eyes of the colonial administration.

⁵¹⁸Administration Report, Kelantan, 1934, pp. 75-78, ANM/KL/D/SUK2; "Minta keterangan kenapa Ugama tidak memungut zakat perniagaan dan zakat harta yang cukup nisab", ANM/KL/Record of "Majlis Ugama Islam Kelantan" in file 462/1954.

British adviser's office's statement "...and so questions which had been under consideration for 8 years and which might have given rise to difficulty and uncertainty have been settled in a manner which shows the advantages of patient and reasonable discussion between men who respect each other's views and who really seek an agreed solution"⁵¹⁹ clearly reflects that *ḥudūd* law was not favourable in the eyes of the British adviser's office.

It is worth noting that the principal occupation in Kelantan was rice growing, although the most valuable export was rubber. Over 91% of the population was Malay small-holders and fishermen with little of the European and Chinese economic development which provide the revenue of Johore. This was also true in the case of Trengganu. In 1937, the revenue of the Kelantan State Government reached the exceptionally high figure of \$3, 209,000 of which 58% came from import duties and the opium monopoly, while the export duties on rubber, tin, and manganese were relatively small whilst in Trengganu, customs duties and opium monopoly contributed 77.5% of its total revenue.⁵²⁰ As discussed in Chapter 2, the opium business was monopolised by the Chinese businessmen with Royal connections whilst large scale commercial cultivations were financed by the Europeans. The native Malays of Kelantan were still small holders in padi planting and rubber cultivation. It makes sense at that time that *zakat* imposed was virtually only on agricultural produce (*padi*).

By the 1930s, despite the tendency of other Malay States under British administration toward the creation of hierarchically organised Islamic bureaucracies owing position and delegated authority to the Sultan and the traditional ruling class, only the *Majlis Ugama* of Kelantan displayed relative autonomy and financial

⁵¹⁹ Administration Report, Kelantan, 1934, p. 78, ANM/KL/D/SUK2.

⁵²⁰ Lennox A. Mills; *British Rule in Eastern Asia*, pp. 104-106.

independence.⁵²¹ In the case of Kelantan, even though the Majlis was financially independent, its administration and revenue were managed by the British Adviser's office.⁵²² In addition, prior to 1942, the Majlis was actively administered politically by the Menteri Besar. However, realising his executive power was eroding, the Sultan issued a directive which stipulated that all matters must be referred direct to him.⁵²³

After the Federal Council of the Federated Malay States was established in 1909, the State Councils had legislated only in matters of religion and Malay custom.⁵²⁴ On the 24th April, 1927, an agreement for the reconstitution of the Federal Council was signed, under which in effect the Malay rulers of Selangor, Perak, Negri Sembilan and Pahang withdrew from active participation in the deliberations of the Council; and the Council was enlarged by the addition of a number of official and unofficial members. The constitutional reform of the 1930s laid down by Sir Samuel Wilson's report for future development of the policy of devolution, approved in 1933, restored a greater measure of autonomy to the State Councils in legislative and administrative responsibilities affecting the individual States, resulting in a gradual formation of special bodies with some sort of regulation in the administration of religious affairs. For example, as a result of a report submitted by the committee appointed in 1932 to draw up proposals for Rules and Standing Orders for the State Councils, and to advise as to the final form which constitute the Council, the Selangor State Council in a meeting held on 16th October, 1933 adopted a recommendation which resulted in a second

⁵²¹For further discussion, see Roff (1967, pp. 72-4) and Sadka (1969, pp. 265-71) for detailed discussion on the subject, cited in W.R. Roff, *op.cit.*, p. 103; No. 57/1927 encl. in ANM/KL/Record of "Majlis Ugama Islam Kelantan". See footnote 497: Statement of Revenue and Expenditure of the Majlis.

⁵²²"Vice-President of Ugama Islam Kelantan to President of Majlis Ugama Islam Perak, 27/1/51", ANM/KL/PK. Rel. Dept No. 165/49.

⁵²³"Sultan of Kelantan to Secretary of Majlis Ugama, 18/6/42" encl. in No. 143/1361, ANM/KL/Record of "Majlis Ugama Islam Kelantan". Prior to 1942, the Secretary would refer all administrative matters to the Menteri Besar who would then refer it to the Sultan. However, with the issuance of this circular, the Secretary would refer directly to the Sultan.

⁵²⁴Under the April, 1927 Agreement, the State Councils were given wider powers and considered and approved their own State Budgets for the first time since 1909. Haji Abdul Mubin Sheppard, *A Short History of Negri Sembilan*, (Eastern Universities Press Ltd, Singapore, 1965) p. 89.

committee being created for the consideration of all religious customary matters consisting of ten members under the presidency of the Sultan of each respective Malay State.⁵²⁵

For instance, in Selangor, the “Majlis Ugama Islam dan Adat Istiadat Melayu Selangor (Council of Religion and Malays Custom, Selangor)” was formed under the provision of the “Administration of Muslim Affairs Enactment, 1952”. All expenses of the Majlis and payment of salaries of its servants were borne out of a fund called “Baitul-Māl” which generated its revenue from waqf property, zakat and fitrah, and voluntary contributions.⁵²⁶

Like the Majlis Ugama Kelantan which was also a state matter, the religious administrative bodies of the Federated Malay States were also state matters but in contrast with Kelantan all remuneration of officials and staff was financed from the State Treasury. In addition, the building of the state’s religious schools (madrasah negara), State Mosque and Kathi residences were accounted for under the administrative management of the Public Works Department. In addition, Qur’ān schools in the State were also supported by the State Education Department, except for the payment of salaries for the teachers.⁵²⁷

Subsequently in pursuance of the policy of decentralisation, in Perak, a second

⁵²⁵Selangor Annual Reports, 1933, pp. 4-5; 1934, pp. 4-5; 1935, pp. 4-5, encl. in ANM/KL/B/SUK2; Perak Annual Reports, 1935, p. 3; 1936, p. 3, encl. in ANM/KL/A/SUK1; FMS Annual Report, 1931, pp. 5-6, 19-20, 30, 60, encl. in ANM/KL/P/SP2. For Negri Sembilan, see also footnote 540.

⁵²⁶Federation of Malaya Government Gazette, Selangor, 5th December, 1952, “Administration of Muslim Enactment Enactment, of Selangor, No. 3 of 1952”. See also Ahmad Ibrahim, *Islamic Law in Malaya*, MSRI, Singapore, 1965, pp. 290-291.

⁵²⁷Perak, Annual Reports, 1917, p. 11; 1930, p. 15; FMS, Annual Report, 1912, pp. 36-37; FMS, Government Gazette, No. 14, Vol. V, 28/3/13, CO 574/7, cited in Moshe Yegar, *op.cit.*, pp. 66. The Perak State Mosque costing \$226,500 in 1912 was financed by the State’s Treasury which derived revenue from secular taxes. See Perak Annual Report, pp. 36-37, ANM/KL/P/PZ5; “Vice-President of Ugama Islam Kelantan to President of Majlis Ugama Islam Perak, 27/1/51”, ANM/KL/PK. Rel. Dept No. 165/49.

separate entity styled the *Council of Chiefs and Ulamas* to deal with matters concerning religion and Malay custom but accountable to the State Council was established in 1932.⁵²⁸ It appears that until early of 1948 after approximately sixteen years, Council of Chiefs and Ulamas was the only body responsible for religious matters and Malay custom. In addition, it was possible that failure of the Council of Chiefs and Ulamas to satisfactorily sustain the growing needs of Muslims in Perak had led to the proposal of the re-organisation of the religious set-up contemplated in 1948. As a result, an interim committee on Muslim Religion and Malay Custom, as an advisory body, was formed with the objective of making recommendations on the creation and operation of a Religious Department under the advice of a Council as set out in Article VI of the first part of the Perak State Constitution.⁵²⁹ Subsequently, the *Majlis Ugama Islam dan Adat Melayu Perak* was legally created on 23rd October, 1949 governed by enactments and rules of the *Majlis* No. 1/1949 dated 16th August, 1949" in pursuance of the Government Gazette No. 829 published on 16th August, 1949. In a series of deliberations, the committee recommended an urgent procedure to put into shape the control of religious schools (al-Qur'ān). Thereafter, activities of the Religious Department were reported in the State Council.⁵³⁰

The *Majlis Ugama Islam dan Adat Melayu Perak*, in its first extremely productive meeting in October, 1949, did not prevent it from tabling a resolution to formulate Rules and Commands No. 1/1369 (*Rang peraturan-peraturan dan Perintah-perintah*), including the appointment of a secretary to the *Majlis* and the creation of a

⁵²⁸Perak Annual Reports, 1932, p. 3; 1933, p. 3, 1935, p. 4; 1936, p. 4, encl. in ANM/KL/A/SUK1; "6th Annual General Meeting of *Majlis Ulama Perak*, 25/1/53" encl. in ANM/KL/PK. Rel. Dept No. 24/49; "Extract of minutes of Annual General Meeting of the *Majlis Ulama Perak*, 24/1/55", encl. in ANM/KL/PK. Rel. Dept No. 24/49.

⁵²⁹"Opening address of the Sultan of Perak to the State Council at a budget meeting on 21/12/48" encl. in ANM/KL/PK. Rel. Dept No. 179/49.

⁵³⁰"Extract of minutes of the 9th meeting of the Interim Committee appointed to formulate enactments and rules of a *Majlis Ugama Islam dan Adat Melayu Perak*, 18/10/49", ANM/KL/PK. Rel. Dept No. 90/49; "President of the Council of Religion and Malay Custom to the S.S. of Perak, 30/11/51", ANM/KL/PK. Rel. Dept No. 179/49; "Opening address Secretary of Council of Religion and Malay Custom of Perak, on the inauguration day of the *Majlis*, 2/11/49", ANM/KL/PK. Rel. Dept No. 145/49.

committee to suggest and formulate rules and command for the administration of the Majlis. Another committee was also created to investigate and prepare statements for the administration of various operational entities under the Majlis.⁵³¹

In Selangor, religious matters were dealt with by a ten-member subcommittee of the State Council known as the "Religious and Customary Committee of State" which had no executive power, formed in 1931.⁵³²

By early of 1954 or probably earlier, the "Majlis Duli Raja-Raja Negeri Melayu (Council of Rulers of Malay States)", in an attempt to standardise the laws and rules pertaining to religious matters, passed a resolution and subsequently appointed a "Jawatankuasa Tetap (Permanent Committee)" which in turn appointed a "Jawatankuasa Kecil (sub-committee)" to advise and formulate a form of law and rules pertaining to religious matters which would be compatible in all the Malay states. It appears that the religious machinery of Perak was adopted as a model by some Malay states. Selangor paved the way and started to formulate a more structured form of its religious machinery. Surprisingly, probably not in position to formulate its own efficient system, Selangor turned to the Department of Religious Affairs of Perak for assistance, requesting a copy of Perak's laws and rules, forms used in its administration and

⁵³¹"Persidangan Majlis Ugama Islam dan Adat Melayu yang pertama, 23rd October, 1949", ANM/KL/PK. Rel. Dept No. 145/49. For rules of the Majlis, see "Peraturan-peraturan Majlis Ugama Islam dan Adat Melayu Perak, 1957 encl. in ANM/KL/A/HEUI 5, *Perak Gazette Notification*, 26/12/57, No. 1831. These rules supersede the rules of 1951.

⁵³²Selangor Annual Reports, 1933, pp. 4-5; 1934, pp. 4-5; 1935, pp. 4-5, in ANM/KL/B/SUK2. Cf. Moshe Yegar, *op.cit.*, p. 66.

examples.⁵³³ Selangor's footsteps were followed by Brunei and Kedah⁵³⁴

Even though Kelantan seems to be the forerunner in the formulation of a proper religious administration since 1915, Perak and Selangor appear to be the main reference points. By this time, in some Malay states, the President or Chairman of the Majlis Ugama received allowances for running the administration of zakat and fitrah whilst in Perak, the President was not paid any allowance for his direct administration of the zakat and fitrah department.⁵³⁵ In addition, even the allowances paid to the members for attending meetings of the Majlis were not standardised. For instance, in October 1964, the Majlis Ugama Islam, Kelantan, in an attempt to standardise and normalise its rates of allowances paid to members of the Majlis, Mufti, Kathi, and officials of the mosque, communicated with the Department of Religious Affairs in various Malay states. In a similar situation, the Majlis of Selangor communicated with the Majlis of Perak.⁵³⁶

⁵³³ "Pejabat Ugama Islam dan Adat Istiadat Melayu Selangor to Pejabat Ugama dan Adat Melayu Perak, 313/54", "Reply of enquiry, the Majlis to Che' Saad bin Mustafa from Kedah, 11/10/54", encl. in ANM/KL/PK. Rel. Dept, No. 175/49. For detailed functions of the Majlis Ugama, its policy and relation between Islam and the Malay customs, see "Enactment No. 6 of 1951, State of Perak" published in *Supplement to the Federation of Malaya Government Gazette*, 19/2/52, No. 4, Vol. V, Notification Perak No. 286.

⁵³⁴ "Secretary of the Majlis Ugama Islam Brunei to the Secretary of the Majlis Ugama Perak, 9/12/63", "Secretary of the Majlis Ugama Islam dan Adat Melayu Perak to the Secretary of the Majlis Ugama Islam Brunei, 27/5/64, 13/7/65", "Secretary of the Majlis Ugama Islam Brunei to the Secretary of the Majlis Ugama Islam dan Adat Melayu Perak, 6/7/65", "Secretary of the Dept. of Relig. Aff. Kedah to the Secretary of the Majlis Ugama Islam dan Adat Melayu Perak, 28/9/64", all encl. in ANM/KL/PK. Rel. Dept, No. 175/49.

⁵³⁵ "Head of the Dept. of Relig. Aff. and Malay Customs, Pahang to the President of the Dept. of Relig. Aff. and Malay Customs, Selangor, 22/9/64", President of the Council of Religion and Malay Customs, Perak to the Head of the Dept. of Relig. Aff. and Malay Customs, Pahang, 13/10/64", all encl. in ANM/KL/PK. Rel. Dept, No. 175/49.

⁵³⁶ "Secretary of the Majlis Ugama Islam Kelantan to the President of Jabatan Ugama Islam, Selangor, Perak, Pahang, Negri Sembilan, Perlis, Trengganu, Johore, Penang, and Malacca, 25/10/64", "President of the Jabatan Ugama Islam Selangor to the President of the Jabatan Ugama Islam Perak, 27/4/65", "President of the Jabatan Ugama Islam Perak to the President of the Jabatan Ugama Islam Selangor, 5/5/65", "S.S. Johore to S.S. Perak, 21/6/65", all encl. in ANM/KL/PK. Rel. Dept, No. 175/49.. In Perak, allowances were paid out of the Zakat and Fitrah Fund as follows:

	% paid from Zakat and Fitrah Fund
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As mentioned earlier, even though the constitutional reform of the 1930s, approved in 1933, had restored a greater measure of autonomy to the State Councils in legislative and administrative responsibilities affecting the individual States, resulting in a gradual formation of special bodies with some sort of regulation in the administration of religious affairs,⁵³⁷ section 144(4) of the Federal Constitution of 1957 had partially failed to address the issue of the service of those under the Department of Religious Affairs. For instance in Johore and Perak, by 1965, the issue of “Designated Posts” and “Non-Designated Posts” was far from settled. However, in Johore, under the law of the “State Service Commission” the posts were divided into two categories:⁵³⁸

A). Non-Designated Posts: President of the Majlis, Mufti /Assistant Mufti, Chief Kathi, and Internal Auditor and Registrar of Religious Schools.

B). Designated Posts: Kathi, Religious Officer, Inspector of Religious Department (Merinyu), Clerk (Arabic), Imam, Bilal, Nuja, Assistant Internal Auditor, Religious Teachers, Qur’ān Reader at the Royal Cementary, and *Pemandi Mayat Perempuan*.

Meanwhile, in Perak, pursuant to the “Law of the Service Commission of Perak, No. 10/1959, section 2(2)(g), the posts of President and Secretary of the Majlis, Mufti, Chief Kathi, Nadzir (Inspectorate) and Penyelia (Supervisor), Religious School, Religious Teacher, Religious officer and Muballigh, were not deemed as the “designated-posts”. At this time, the Majlis was not even sure that these posts were deemed as “Designated-Posts” under section 144(4) of the Federal Constitution. In addition, since the staff and officials of the Majlis Ugama Islam Perak were paid out of the “Zakat, Fitrah and Baitul-Mal Fund”, they were deemed as government servants and

Officials of the Mosque	5% from respective “Kariah Masjid”: i. 2.5% is being allocated to Siak, ii. 2.5% is being allocated to Imam, Khatib and Bilal.
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⁵³⁷See page 189

⁵³⁸“S.S. Johore to the S.S. Perak, 21/6/65”, encl. in ANM/KL/PK. Rel. Dept, No. 175/49.

totally eligible for government provided facilities such as hospital treatment.⁵³⁹

In Negeri Sembilan, religious matters and Malay custom were dealt with by the "Upper Chamber"⁵⁴⁰ of State which legislated by "Orders in Council". The Majlis Ugama Islam of Negeri Sembilan, as an administrative body, was created following the gazetting of the "Council of Muslim Religion Enactment, 1957 (N.S. No. 1 of 1957)".⁵⁴¹ With respect to finance, as in Perak and Selangor, the Negeri Sembilan State Government took responsibility for restoring or reconditioning buildings of religious consequence.⁵⁴² By the end of 1960, the Majlis Ugama Islam of Negeri Sembilan was totally financed by the State Treasury. Under the heading "Religious Affairs and Shari'ah Courts" of the annual expenditure, the Majlis was allocated \$574,516 in 1960 and \$830,168 in 1962 from the consolidated fund.⁵⁴³

The unfederated Malay States with the exception of Kedah gradually followed in the footsteps of the FMS in formulating a centralised religious entity. In Kedah, the

⁵³⁹"President of the Majlis Ugama Islam dan Adat Melayu Perak to the State Secretary of Perak, 15/7/65"; President of the Pejabat Ugama Islam Melaka to the President of the Majlis Ugama Islam dan Adat Melayu Perak, 28/8/65", "President of the Majlis Ugama Islam dan Adat Melayu Perak to the President of the Pejabat Ugama Islam Melaka, 22/7/65", all encl. in ANM/KL/PK. Rel. Dept, No. 175/49. In Malacca, staff and officials of the Majlis were paid out of the "Kumpulan Wang Pentadbiran Am Majlis (Consolidated General Administration Fund)".

⁵⁴⁰A policy of decentralisation of authority was introduced by the Federal Government in 1927. In Negeri Sembilan, the State Council, over which the Yam Tuan had presided for over thirty years, was dissolved. In its place two bodies were created. The Upper Chamber was the Council of the Yang Di Pertuan Besar as President and the four Undangs (ruling chiefs) and the Tengku Besar as the Chief Minister. A new State Council, called the Lower Chamber, consisted the British Resident as President, 8 official and 7 unofficial members. However, the Kathis was not an official of the Council, where in Perlis he was a member of the State Council. See Haji Abdul Mubin Sheppard, *A Short History of Negri Sembilan*, (Eastern Universities Press Ltd, Singapore, 1965) pp. 88-89. For a detailed account of the Negri Sembilan's State Legislature and its structure, see M.B. Hooker, "Law, Religion, and Bureaucracy in a Malay State: A Study in Conflicting Power Centers", *The American Journal of Comparative Law*, Vol. 19, 1971, pp. 273-286.

⁵⁴¹*Negeri Sembilan Government Gazette*, 21/1/60, p. 13.

⁵⁴²FMS Annual Report, 1931, pp. 5-6; 1931, pp. 5-6; 1932, pp. 5-6; 1935, pp. 6-7, all encl. in ANM/KL/P/SP2. Cf. Haji Abdul Mubin Sheppard, *op.cit.*, p. 89;.

⁵⁴³*Negeri Sembilan Government Gazette*, 1960, p. 39; 1962, p. 15..

administrative mechanism of the religious entity was embodied in the State Council by a special enactment passed in 1931⁵⁴⁴, whilst in Perlis, as in Kedah, the appointment and remunerations of mosque and Syari'ah Court officials were borne by the State.⁵⁴⁵ It appears that only in 1962, the enactment of the Administration of Muslim Law, 1962 formalised the creation of a centralised religious entity called "Majlis Ugama Islam Kedah to aid and advise the Sultan in matters relating to the Muslim religion."⁵⁴⁶ Revenue collected from zakat and the building of the two new mosques were administratively managed by the British Adviser's office.⁵⁴⁷

Of all the Malay States, only Johore and Trengganu had adopted a formal and written constitution modeled on British precedents. Johore, which had been profiteering from its proximity to Singapore's entrepôt, and Trengganu, had been following the advice of British colonial administration with its efficient centralised administration. On 14th April, 1895, the constitutional laws of Johore, drafted by an English law firm in Singapore, were passed and remained in force until 1946, then adopted by Trengganu

⁵⁴⁴ *Kedah Government Gazette*, Vol. 14, No. 8, 29/8/31, p. 156, ANM/KL/GK/SUK2. It worth noting that on some occasions, the State Council decided to exempt retired ulama from land tax. In Kedah and Perlis, the title *Shaikh al-Islām*, frequently used in the era of the Ottoman Empire, referred to Chief Kathis. By 1962, the term "Kathi" was widely used replacing the term "Shaikh al-Islām". For "Tabulation of salary scales for Kathis etc in Johore, Perak, Selangor, Kelantan, Kedah, Trengganu and Pahang", see ANM/KL/No. 19A in P.U. & A. Phg. 56/51. Cf. Moshe Yegar, *op.cit.*, p. 72; "Council of Religion and Malay Custom, 1367 A.H (1948)" encl. in ANM/KL/Kedah Government Gazette, 20/9/62; "Administration of Muslim Law Enactment, 1962" encl. in ANM/KL/Kedah Government Gazette, 11/9/62. For organisation chart of "Jabatan Hal Ehwal Ugama Kedah" and "Majlis Ugama Islam Kedah", 1964-1965, see "Suara Majlis Ugama Islam Kedah", ANM/KL/K/UG9.

⁵⁴⁵ Perlis, Annual Reports, 1332/1914, p. 42; 1349/1930-31, p. 63; Perlis State Council Minutes CO 717/4, 2nd August, 1920 (Enclosure 523); 9th August, 1920; 1st November, 1920 (No. 21); 3rd January, 1921 (no. 25), all cited in Moshe Yegar, *op.cit.*, p. 73.

⁵⁴⁶ "Council of Religion and Malay Custom, 1367 A.H (1948)" encl. in ANM/KL/Kedah Government Gazette, 20/9/62; "Administration of Muslim Law Enactment, 1962" encl. in ANM/KL/Kedah Government Gazette, 11/9/62.

⁵⁴⁷ Perlis Annual report, 1356/1938, pp. 58, 80, in ANM/KL/R/SUK2. Collection of zakat and fitrah was \$52,250 of which \$37,000 was spent on various charitable and religious purposes and \$8,000 was added to the Reserve Fund against failure of crops amounting to \$14,000. In addition, the Alwee Religious School was completed at the cost of \$29,000. A qualified teacher was engaged from Egypt through the good offices of the British Consul General at Cairo.

with certain modifications⁵⁴⁸ resulting in much parallelism in the modus operandi of both State Councils. In the case of Johore, the State Council was in fact effectively administered by British officials whilst the Council of Ministers (Jemaah Pangkuan Kerajaan) concerned itself primarily with policy formulation on religious matters and Malay custom⁵⁴⁹ whilst the "Religious Advisory Board" administratively managed Muslim affairs. Trengganu, in 1923, set up a Department of Religious Affairs which was administered in tandem by the *Shaikh al-Islām*,⁵⁵⁰ and the Mufti. In the following year, a subsidiary department was created as a collection agency to recover unpaid dues of the *Baitulmal*.⁵⁵¹

Until the end of 1954, laws relating to the administration of the Muslim religion in Trengganu were found scattered in fifteen enactments and other instruments set out in the third Schedule. In July, 1955, the Legal Adviser, M. Garton, attempted to consolidate the laws relating to the administration of Muslim law and Malay customary law, the constitution and organisation of religious authorities, and the regulation of religious affairs, modeled closely on the laws at that time found in Kelantan and Selangor with a few minor variations, were passed and gazetted on 27th July, 1955. The consolidated law was known as the Administration of Muslim Law Enactment, 1955

⁵⁴⁸For a detailed account on Johore, see Rupert Emerson, *Malaysia-A Study in Direct and Indirect Rule* (University Malaya Press, Kuala Lumpur, 2nd. ed., 1964) pp. 197-220. For Trengganu's Constitution, see Abdul Majeed Mohamed Mackeen, "Contemporary Islamic Legal Organization in Malaya", *Southeast Studies*, Monograph Series, No. 13 (Yale University, New Haven, Connecticut, 1969) pp. 27-29.

⁵⁴⁹SS Annual Report, 1914, p. 39, in ANM/KL/SS4; Norton Ginsburg and Chester F. Roberts, *Malaya* (University of Washington Press, Seattle, 1958) pp. 436-437; J.A. Kennedy, *A History of Malaya, A.D. 1400-1959* (Macmillan and Co., London, 1962) pp. 250-251. See also "Undang-undang Majlis Agama Islam Johor 1949 (Bil. 2 tahun 1949)" encl. in ANM/KL/J/SUK4, Johore Government Gazette, 30/10/58; Council of Religion Enactment No. 2 of 1949, Establishment of the Majlis Ugama Johore, encl. in ANM/KL/J/SUK4.

⁵⁵⁰*Federation of Malaya Government Gazette, Trengganu*, 27/7/55, "Administration of Muslim Law Enactment, 1955 (1374)", encl. in ANM/KL/T/SUK 3. Under the 1955 consolidation law, section 5(1) defines the head of the Department of Religious Affairs as "Commissioner" appointed by the Sultan of Trengganu.

⁵⁵¹Moshe Yegar, *op.cit.*, p. 82.

(1374).⁵⁵²

Penang, being part of the Straits Settlements prior to Malaya's independence in 1957, started to formulate its own centralised religious administration in 15th April, 1959 known as the "Council of Muslim Religion, State of Penang and Province Wellesley" to advise the "Yang di Pertuan Agong" who is the head of state for all Federal Territories. The Council consisted of the President, the Kathi, not more than twelve Muslim members of the Legislative Council appointed by the Governor upon advice by the President and not less than ten members appointed by the *Yang di Pertuan Agong* upon advice by the Presiden of the Majlis.⁵⁵³

Malacca, which joined the Federation of Malaya on 1st February, 1948, followed suit on 28th September, 1960 when the Majlis Ugama Islam Melaka was officially launched in a grand state ceremony by the Governor of Malacca. Historically, Muslims in Malacca had been denied for about five centuries the right to establish Islam as the official religion of the state which in effect had provoked Malays in Malacca to suggest a centralised entity for the administration of Islam.⁵⁵⁴ Prior to the inception of the "Pejabat Ugama Islam" which was the administrative arm of the Majlis, religious matters were the collective responsibilities of local Muslims functioning through a general administrative officer, working in tandem with the Kathi and Mufti to register, administer and regulate matters regarding "marriages and divorces" only. It is worth noting that these officers were not government employees but worked on a voluntary basis. It was after 31st August, 1957, that the State Government started to formulate some sort of laws to administer and regulate religious matters pursuant to the provisions

⁵⁵²*Federation of Malaya Government Gazette, Trengganu*, 27/7/55, "Administration of Muslim Law Enactment, 1955 (1374)", encl. in ANM/KL/T/SUK 3.

⁵⁵³"Undang-undang Pentadbiran Ugama Islam Pulau Pinang, 1959", ANM/KL/W/PU1. Cf. paper presented by Haji Mohd Yusoff Haji Abd Latiff, "Pengutipan, penghasilan dan penggunaan zakat di Pulau Pinang masa mini dan masa depan di dalam konteks pembangunan umat Islam", *Seminar Zakat dan Cukai Pendapatan*, 5-6 November, 1988.

⁵⁵⁴"Pembukaan Rasmi Majlis Ugama Islam Melaka pada 7 Rabiul-akhir, 1380", ANM/KL/M/MUI2.

stipulated in the Federal Constitution which recognised Islam as the official religion of Malaya. Subsequently, “Undang-undang Pentadbiran Hukum Syarak Negeri Melaka (Administration of Muslim Law Enactment, 1959)” was formulated and approved on 20th April, 1959, placing religious matters on a proper footing as official state matters.⁵⁵⁵

This approval subsequently led to the establishment of “Pejabat Agama” on 1st September, 1959 spearheaded by a pensioner as President (Pengetua)⁵⁵⁶ on temporary appointment assisted by a few clerical staff. By this time, “Pejabat Agama” could not commence operation pending the establishment of a corporate advisory body known as “Majlis Agama Islam Melaka”. However, due to the unexpected demise of both the “Yang di Pertuan Agong yang Pertama” and the newly appointed Mufti, the establishment of the Majlis was finally finalised on 28th September, 1960, as an advisory body to the Pejabat Agama whilst its “Jawatankuasa Shari’ah” functioned as an advisory body on matters related to Islamic law and fatwas.⁵⁵⁷ By early 1963, the Majlis was already fully operational with eight departments which was quite similar to the set-up of Majlis Agama in other Malay states, amongst other, “Pejabat Zakat, Fitrah dan Baitul-Mal”.⁵⁵⁸

Pahang had already a sort of executive religious entity called the Majlis Anggota Pahang headed by the Tunku Besar Pahang to administer religious matters particularly the administration of zakat since early of 1922. In late 1932, based on “Undang-undang

⁵⁵⁵“Penyata Pejabat Agama Islam Melaka Kali Pertama Tahun 1961”, 1/7/62, p. 1, ANM/KL/MUI1; *Government of Malacca Gazette*, 14/2/59, “Administration of Muslim Law Enactment, 1959”, ANM/KL/M/SUK 2.

⁵⁵⁶In the case of Malacca, section 10(2) of the Administration of Muslim Law Enactment, 1959 stipulates that the President of the Religious Affairs Department must be the *ex-officio* President of the Majlis and also hold the post of principal executive officer whilst section 11 stipulates that the Secretary of the Religious Affairs Department be the *ex-officio* Secretary of the Majlis. *Government of Malacca Gazette*, 14/2/59, “Administration of Muslim Law Enactment, 1959”, ANM/KL/M/SUK 2.

⁵⁵⁷ “Penyata Pejabat Agama Islam Melaka Kali Pertama Tahun 1961”, 1/7/62, pp. 1-2, 4, ANM/KL/MUI1. At this juncture, the Majlis had realised that the present laws were not adequate. By early 1962, the Majlis had taken steps to amend and add certain provisions of the laws.

⁵⁵⁸“Risalah Umum Berkenaan Perjalanan dan Kemajuan Islam di Melaka”, 1/3/63, ANM/KL/M/MUI3.

Berkenaan Dengan Ugama Islam Tahun 1904 Perak", Pahang started to amend its laws pertaining to religious affairs.⁵⁵⁹ By the end of 1949, pursuance to the "Fasal yang ke-6 dalam Undang-undang Tubuh Kerajaan Negeri Pahang, Bahagian yang Pertama" the Sultan as the "Yang di Pertua Ugama Negeri Pahang" issued a directive to formulate a sort of legislations to formulate and regulate an advisory body called the "Majlis Ugama dan Adat Istiadat Melayu". In its initial step, on 3rd December, 1949, a draft legislation to establish the Majlis was ready to be discussed in the Majlis's first meeting.⁵⁶⁰ The Council of Religion and Malay Custom of Pahang, headed by the Chief Minister, established by virtue of the State Enactment No. 5 of 1949, was an advisory body to the Sultan of Pahang. Upon the recommendation by the Secretary to the Sultan, two sub-committees, called the Majlis Ugama Islam Committee headed by the Tunku Besar Pahang and the Adat Istiadat Melayu Committee headed by the Tengku Arif Bendahara, were created to investigate and put up proposals as to what legislations were required in order to regulate religious affairs. During the Majlis's first extremely productive meeting on 17th March, 1950, after a series of deliberations, a resolution to establish a Department of Religion and Malay Customs was unanimously passed and would be submitted for approval by the Sultan of Pahang. It was on the strength of this resolution that the department was established. In addition, the resolution stipulated that the head of department must be a senior public officer in the Malayan Civil Service (Pegawai

⁵⁵⁹ANM/KL/TBP 82/1932; "Tunku Besar Pahang to Sultan of Pahang, 10/8/32" encl. in Pejabat Sultan Office (PSO) 104/32. At the same time, Perak was also amending its own existing laws dated 2nd April, 1932. However, the emphasis for amendments was only on regulations on spiritual matters such as fasting rather on revenue aspects. See also "Deraf undang-undang kerana hendak memindakan undang-undang yang berkenaan dengan ugama Islam tahun 1904, 4/8/32 to 10/8/32" encl. in ANM/KL/TBP 82/32.

⁵⁶⁰"Opening address by the Sultan of Pahang during the Majlis Ugama First Meeting held in Pekan on 17/3/50" encl. in ANM/KL/No. 6 in P.U. & A. Phg. 14/1951; "Memorandum Menteri Besar to Secretary to the Sultan of Pahang, 25th, February, 1950" encl. in ANM/KL/No. 7 in Phg. 1281/49 (Pahang 440/1950). See also page 208. The draft bill which govern the Muslim affairs used the word 'Muhammadan' to describe the followers of Islam and of their laws and other matters relating to their affairs. However, the Legal Adviser advised the Sultan of Pahang that the word 'Muslim' was a more apt description than the word 'Muhammadan'. Cf. "Legal Report by the Legal Adviser of Pahang, A. M. Webb, 20th March, 1951", "State of Pahang Enactment No. 1 of 1951, 15th March, 1951", all encl. in ANM/KL/P.U. & A. Phg. 183/1951. This Enactment amended the schedule "The Muhammadan Law and Malay Custom (Determination) Enactment (F. M. S. Cap. 196), in so far as it relates to the State of Pahang.

Tadbir Melayu), not necessarily a person with a religious competency as in other Malay states. By February, 1951, it appears that the advice tendered by the Majlis to the Sultan had not yet received his consent and the minutes did not, however, appear to imply that consent had been asked for. Under this basis, the head of the department argued that the advice tendered has no legal value.⁵⁶¹

By the early year of 1951, the Department of Religion and Malay Customs (Pejabat agama Islam dan Adat Istiadat Melayu) as an administrative arm of the Majlis Ugama Pahang was still in its infancy stage and unable to function efficiently. As a result, the department administration was still under the direct control of the State Secretary's office.⁵⁶² Even after the third meeting of the Majlis held on 8th December, 1950, the problems of administrative powers and its legal establishment between the Department and the Majlis were not yet resolved. The Majlis as constituted was an advisory body whilst the said Department was meant to be its executive organ. However, the constitution of the Majlis (Undang-undang No. 5 tahun 1949) prohibits the head of the executive department to be an official member of the Majlis. As such, it was suggested that the officer-in-charge of the department held the title of the Secretary of the Majlis. By April, 1951, the Chief Minister's Office, in supporting the department's recommendations, issued a statement that all matters relating to the

⁵⁶¹ "Head of Relig. Aff. Dept to President of Council of Religion and Malay Customs, 15/2/51" encl. in ANM/KL/No. 6 in P.U. & A. Phg. 14/1951; "Copy of Minutes of the First Meeting of the Majlis Ugama Islam dan Adat istiadat Melayu, held on 17/3/50" encl. in ANM/KL/No. 19 in P.U. & A. Phg. 14/1951; Minute Paper Pahang 440/1950, "1st Meeting of Majlis Ugama Islam and Istiadat Melayu", held on 17/3/50" encl. in ANM/KL/Pejabat Sultan File.

⁵⁶² "Head of Relig. Aff. Dept Pahang to the S.S., 9/2/51" encl. in ANM/KL/No. (1) in P.I.I. Phg. 11/51. The incompetency of the Religious Affairs Department's administration to establish a Western-style office concept was clearly reflected in his letter, ".....a great deal of correspondence about matters concerning this office have been done by you and that you will/over appropriate matters, once this office is established....I am now prepared to take over whatever matters you think I am competent to deal with....". Cf. i) Undang-undang Majlis Ugama Islam dan Adat Istiadat Melayu, ii) Creation of Relig. Aff. Dept Pahang, 12/2/51 to 1/5/51", all encl. in ANM/KL/ 14/51, Jabatan Ugama Islam Pahang.

administration of religious matters be placed under the department's jurisdiction.⁵⁶³

⁵⁶³“Head of Relig. Aff. Dept to President of Council of Religion and Malay Customs, 15/2/51” encl. in ANM/KL/No. 6 in P.U. & A. Phg. 14/1951; “Office of the Menteri Besar to the Secretary to the Sultan of Pahang, 20/4/51” encl in ANM/KL/No. 9 in R.A. Phg. 14/1951 (Copy of No. 2 in Phg. 806/51.

Legislation and Administration of Religious Taxes

Background

The informal institution of zakat in the Malay Peninsula had come a long way since the advent of Islam. It was known that the practices were at kampung level. Until the formulation of enactments and rules to administer zakat collection based on British colonial precedents, Muslims in Malaya were accustomed to disbursing zakat and fitrah dues to any deserving recipients, as interpreted individually by the payer. This is still practised in some states today. In some cases, zakat and fitrah were disbursed for the sustenance of the *surau* and its office bearers, or to the *pondok* and other religious schools run by *Malay ulama* who received no financial assistance from the State.⁵⁶⁴ Even though Shāfiʿī doctrine, the dominant doctrine of the Malays, has formulated a concluding fatwa (*qawl muʿtamad*) that zakat dues must be disbursed to not less than three asnaf out of the possible eight and for every asnaf to not less than three recipients, some Malays disburse zakat to only one recipient. In addition, the disbursing of zakat, especially fitrah, to recipients not within the definitions of the eight asnaf still prevails. As a result of numerous variations in the system of disbursement of zakat and fitrah, compounded by the non-existence of proper administrative mechanisms and non-intervention officially by the state, the proceeds from zakat and fitrah were virtually lost without any alleviation of social disparity among deserving Muslims.⁵⁶⁵

For instance, in Perak, before the establishment of a centralised Western-style zakat administration, collection and disbursement system worked at the local level in each respective mukim. Zakat and fitrah were surrendered to the “pondok teachers”, to the “Haji and Lebai” who lived in that mukim without realising that the recipients were

⁵⁶⁴ Abdul Aziz Mohd Yassin, *Zakat-A Perspective on its Origin and Place in Malay Society* (Academic Exercise, University of Malaya, Singapore, 1957) pp. 10-12; Mujaini Tarimin, *Zakat Pertanian--Sistem dan Perlaksanaannya* (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1990) pp. 54-55.

⁵⁶⁵ Muhamad Ghazali Hj. Abdullah, *al-Itharah*, Majlis Ugama Islam Selangor, 1969, p. 1, cited in Mujaini Tarimin, *Zakat Pertanian--Sistem dan Perlaksanaannya* (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1990) p. 55.

not eligible asnaf under the Islamic law or the recipients would then disburse it to available asnaf. To some payers, the difficulty in disbursing the zakat to eligible recipients had led to a culture in which the zakat due was being surrendered to people who were not eligible for it.⁵⁶⁶

By the early years of the 20th century there was no doubt that the efficient British centralised administration had become a model for the establishment of a centralised religious institution. Even though initially all forms of capital expenditure and maintenance of the *Majlis Ugama* were partially financed by the State government with their officials such as the chief Kathis on the state payroll, it was not clear, at that time, whether these entities were part of the government's vehicles or separate independent entities. As the entity grew larger and more complex with increased expectations by Muslims in general, they realised the need for a strong and financially independent vehicle to administer Muslim affairs effectively. The first state to bring zakat and fitrah under state control was Trengganu, after Kelantan in 1915, where the Department of Religious Affairs under the direct command of the Menteri Besar organised the collection and disbursement of these funds. Pahang adopted this system in 1922, followed by Perlis in 1930, Johore in 1934 and Kedah in 1936 later triggering a chain reaction to other Malay States until 1957 when Negri Sembilan was the last Malay state to implement some sort of zakat institution. The power to collect and disburse zakat was vested in the Majlis Ugama Islam Negeri in each state and administratively managed by the respective state's Jabatan Ugama Islam.⁵⁶⁷

⁵⁶⁶“Penyata Kutipan Zakat, Fitrah, Baitul-Mal dan Kawalan Waqf, 1953, 1/4/53” encl. in ANM/KL/PK. Rel. Dept No. 230/50.

⁵⁶⁷Ahmad Ibrahim, *Islamic Law in Malaysia* (MSRI, 1975) p. 336; Mujaini Tarimin, *Zakat Pertanian--Sistem dan Perlaksanaannya* (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1990) pp. 53-54.

Interpretation of the Meaning of Zakat

The formulation of regulations and rules to administer the zakat system was arrived at independently in each state. As a result, the enactments gazetted by respective State Councils applied in tandem with the zakat rules, were bound to have variations in definition and implementation. The result of many may be tabulated as follows:⁵⁶⁸

Malay State	Interpretation of Zakat
Perlis and Perak	A donation required to be made by a Muslim out of his property and income in accordance with the Muslim law.
Kelantan and Pahang	The tithe or crop payable annually under the Muhammadan law in respect of padi land.
Kedah	A gift required to be made by a Muslim in accordance with the Muslim law.
Selangor	The tithe of certain property payable annually in accordance with the Muslim law.
Johore	A tithe upon his property required to be paid by a Muslim in accordance with Muslim law.
Penang	Zakat on certain property that is payable annually in accordance with the Muslim law.
Malacca	The tithe of certain property payable annually in accordance with Muslim law.
Trengganu	The tithe of the padi crop and live stock such as cattle, goats and sheep, payable annually in respect of padi planted and of live stock reared, subject to the exemptions prescribed by this Enactment.

⁵⁶⁸ Abdul Aziz Mohd Yassin, *Zakat-A Perspective on its Origin and Place in Malay Society* (Academic Exercise, University of Malaya, Singapore, 1957) pp. 12-13; "Administration of Muslim Enactment Enactment, of Selangor, No. 3 of 1952" encl. in ANM/KL/*Federation of Malaya Government Gazette*, Selangor, 5/12/52; The Administration of Muslim Law (Fitrah and Zakat) Rules of Selangor, 1953; "Undang-undang Pentadbiran Ugama Islam Pulau Pinang, 1959", ANM/KL/W/PU1; ANM/KL/*Kedah Government Gazette*, 14th July, 1955; "Minutes of the 9th meeting of the Majlis Ugama Islam dan Adat Melayu Perak held on 14/9/50" encl. in ANM/KL/Perak Relig. Dept. 232/50; "Administration of Muslim Law Enactment, 1959" encl. in ANM/KL/M/SUK 2/*Government of Malacca Gazette*, 14/2/59; "Administration of Muslim Law Enactment, 1955 (1374)" encl. in ANM/KL/T/SUK 3/*Federation of Malaya Government Gazette, Trengganu*, 27/7/55; "Administration of Muslim Law Enactment, 1955 (1374)" encl. in ANM/KL/T/SUK 3/*Federation of Malaya Government Gazette, Trengganu*, 27/7/55; "Supplement to Federation of Malaya Government Gazette, Johore, 15/12/57", pp. 210-211, encl. in ANM/KL/J/SUK 4.

Similarly though there was a consensus that fitrah is an obligatory tax payable in either in husked rice (beras) which is the staple food of the Muslims in Malaya, or its equivalent in money, by every Muslim at the completion of the fast during the month of Ramadhan, it too was subject to various interpretations. The following table illustrates this situation:⁵⁶⁹

State	Interpretation of Fitrah
Perlis	A gantang of rice or its substitute
Selangor, Pahang and Kelantan	The amount of rice payable under the Muslim Law annually
Perak	One gantang of rice (beras) payable according to the Muslim Law by every Muslim every year in the month of Ramadhan until the prayer of "Aidil-Fitri"
Kedah	Does not collect fitrah officially. Fitrah is deemed as "zakat batin" (concealed payment). Its payment is the prerogative and conscience of the payer.
Malacca	The amount of rice or its equivalent value in money payable under the law of the Muslim Religion annually by a Muslim at the end of the month of Ramadhan to be used for religious or charitable purposes recognised by Muslim law.
Trengganu	The amount of rice or its value payable under the Muslim law annually by a Muslim at the end of the month of Ramadhan to be used in accordance with Muslim law.
Johore	The amount of rice or its equivalent in money payable by every Muslim annually in accordance with Muslim law.

⁵⁶⁹ Abdul Aziz Mohd Yassin, *Zakat-A Perspective on its Origin and Place in Malay Society* (Academic Exercise, University of Malaya, Singapore, 1957) p. 13; "Administration of Muslim Enactment Enactment, of Selangor, No. 3 of 1952" encl. in *ANM/KL/Federation of Malaya Government Gazette, Selangor*, 5/12/52; The Administration of Muslim Law (Fitrah and Zakat) Rules of Selangor, 1953; "Minutes of the 9th meeting of the Majlis Ugama Islam dan Adat Melayu Perak held on 14/9/50", ANM/KL/Perak Relig. Dept. 232/50; "Administration of Muslim Law Enactment, 1959" encl. in *ANM/KL/M/SUK 2/Government of Malacca Gazette*, 14/2/59; *Supplement to Federation of Malaya Government Gazette, Johore*, 15/12/57", ANM/KL/J/SUK 4.

Formative Decade--Advent of Zakat Institution in Pre-War Malaya

By 1909, six years after W.A Graham took up residence in Kelantan in July 1903, he successfully introduced Western-style reforms to revenue and administration systems. Several legislative measures in the form of either Regulations (*undang-undang*) or Notices (*Notis or Perwawai*) were formulated to make provision for administration of Shari'ah law relating to zakat and other spiritual matters, and to fortify the authority of the central religious institutions. The first zakat notices were issued on 9th September 1907 with the purpose of correcting the popular belief that the padi tax, which had been introduced in 1892 and collected with increasing vigour under Graham, was a perversion of *zakat padi* to secular use. In addition, defaulters of zakat payments were being sued in the Shari'ah Court's; a practise re-emphasised through a regulation dated 8th March 1908.⁵⁷⁰

The year 1938 saw the advent of extensive legislation and administrative reform of the *Majlis Ugama* in Kelantan with the adoption of completely new and concise enactments to formulate new Shari'ah law by special committee covering, amongst others, regulations on conversion to Islam, tithe, zakat and the *Majlis Ugama* itself.⁵⁷¹

Kelantan's success appears to have provided some sort of extrinsic motivation for Pahang to adopt similar measures. The first proposal to regularise the collection and disbursement of at least a portion of zakat padi was mooted by Tunku Besar of Pahang on 2nd August, 1922.⁵⁷² In their initial draft, the rules provided for the use of the zakat

⁵⁷⁰ All the three zakat measures are enclosed in manuscript form in Kel. PB. 10/1916 cited in W.R. Roff, *op.cit.*, pp. 111, 114-117. For detailed discussion on the early years of the Majlis Ugama Kelantan between period 1915 to 1920, see W.R. Roff, "The Origins And Early Years of the Majlis Ugama" in *Kelantan--Religion, Society and Politics in a Malay State*, (Oxford University Press, New York, 1974)

⁵⁷¹ Annual Report, Kelantan, 1938, pp. 75-78, ANM/KL/D/SUK2; Moshe Yegar, *op.cit.*, p. 76. See also "Undang-undang Majlis Ugama Islam dan Adat Istiadat Melayu Kelantan--Undang-undang Nombor 2 Tahun 1966", pp. 58-61, for rules on zakat agriculture, livestock and gold.

⁵⁷² Copy of Memo TB to HRH, 2/8/22, "Peraturan Menghimpunkan Zakat Padi di dalam Negeri Pahang", in W.R. Roff's Collection.

collected in the state for financing the maintenance and operation of religious matters such as mosques and other related activities. Collection of zakat was proposed to be organised by the heads of villages (*Penghulu-penghulu mukim*) and officials of the mosque of each *mukim*. It was also proposed that 50% of the collection in “padi” be converted to cash for the purpose of the mosque’s expenditure and remuneration of its office bearers. Subsequently, as a result of discussions by Tunku Besar Pahang with the mosque officials in various *mukim* to formulate procedures for the selection of the amil, it was proposed that at least $\frac{1}{3}$ of the collection be allocated for the purpose of paying the salaries of the mosque officials and amils, and those involved in the teaching of new Muslim converts to pray.⁵⁷³ Four years later, in 1926, patterns of distribution still had not been resolved. As a result of a recommendation submitted by a committee appointed to report on the basis of distribution, the Sultan of Pahang issued a circular that $\frac{5}{8}$ of zakat padi and $\frac{1}{2}$ of zakat fitrah be allocated to the amils.⁵⁷⁴

For reasons which are unclear, it took another seven years for the *Majlis Anggota Islam Pahang*⁵⁷⁵ to streamline its system of zakat administration, when in 1933 the State Council appointed the Tunku Besar Pahang to chair a committee specially appointed to consider and formulate the rules on the collection of zakat. The committee succeeded in drafting the rules to govern the administration of zakat after only two extremely productive meetings; on 11th September, 1933 and 20th February, 1934. It was recommended that for zakat padi, the *niṣāb* would be 450 gantangs and the tax liability

⁵⁷³Kathi Besar to HRH, 27/1/26 in W.R. Roff’s Collection.

⁵⁷⁴Copy of Minutes of Committee’s Meeting on the Collection of Zakat held on 15/6/26 attended by the Chief Kathi, HRH as President and all District Kathis, in W.R. Roff’s Collection.

⁵⁷⁵The Majlis Anggota Islam Pahang, headed by the Tunku Besar Pahang, an equivalent to the Religious Affairs Department in other Malay states, responsible for the administration of religious matters including zakat collection and disbursement. A Religious Affairs Department was established with its headquarters at Pekan on 1/2/51 followed by the demise of the Majlis Anggota Pahang. However, with the creation of the “Majlis Ugama dan Adat Istiadat Melayu”, two sub-committees were created to advise the Majlis in religious matters and Malay customs. The Tunku Besar, after relinquishing his post as head of the Majlis Anggota Pahang, was appointed as head of one of the sub-committees. See “Notes on file cover” of file ANM/KL/Minute Paper No. P.U. & A.. Phg. 14/51; “Memorandum Menteri Besar to Secretary to the Sultan of Pahang, 25/2/50” encl. in ANM/KL/No. 7 in Phg. 1281/49 (Pahang 440/1950).

10% of which $\frac{1}{2}$ would be collected by an approved and registered *amil* who would remit it to the Majlis Anggota's account. In addition, $\frac{1}{2}$ of the *beras fitrah* would be surrendered to the Majlis Anggota Islam. By early 1934, the draft rules were approved by the State Council.⁵⁷⁶

The draft rules were very extensive and detailed in scope, including accounting procedures similar to the system currently used by the British Adviser's office with its receipt, voucher and register books, with power given to the village committee (*Jawatankuasa Mukim*), power to an external auditor to check the account of the *Jawatankuasa Mukim* and compare it with the Majlis's account. Apart from this modern accounting system embodied in the rules, the draft also reflects a centralised accounting and administration system. Expenditure allocated for any *mukim* was drawn from the central Zakat and Fitrah Fund (*Khazanah Padi Zakat dan Fitrah*).⁵⁷⁷ The drafting of the rules marked the beginning of the establishment of a centralised zakat administration in Pahang. Subsequently, the office called "Majlis Anggota Islam Pahang" was created on 11th September, 1933 to administratively manage the collection and disbursement of zakat padi and fitrah. This entity was a separate entity and under the jurisdiction of the Majlis Ugama dan Adat Istiadat Pahang.⁵⁷⁸

By June, 1934, the draft rules which had been approved were distributed to all *mukim* in Pahang and the Majlis had virtually full control of all religious matters at local level. By 1938, Majlis Anggota Islam Pahang had \$28,536 in its consolidated bank's

⁵⁷⁶"Memorandum TBP to Majlis Anggota Pahang, 8/11/33", "Minutes of Meeting held at the residence of Tunku Besar Pahang on 11/9/33", all encl. in ANM/KL/TBP 104/1933; "Peraturan Zakat dan Fitrah, 1933" encl. in ANM/KL/TBP 104/1933.

⁵⁷⁷TBF 7/1922; PSF No. 13/1926; PSF 272/1932; TBF 90/33, in W.R. Roff's Collection; TBP to Majlis Anggota Pahang, "Deraf Peraturan Zakat Pahang", 1/9/33, "Fikiran Jawatankuasa Bagi Mengutip Zakat dan Fitrah", "Orang Kaya Indera Shahbandar to Tunku Besar Pahang, 21/1/35", all encl. in ANM/KL/TBP 104/1933.

⁵⁷⁸"Notice on the creation of Majlis Anggota Islam Pahang", 25/9/33, ANM/KL/TBP 104/1933.

account generated from the collection of zakat padi and fitrah.⁵⁷⁹

By 1940, however, the Majlis Anggota Islam Pahang's centralised system of zakat collection and disbursement had not been fully successfully enforced. The system of collecting zakat in the form of padi, rather in its equivalent cash value, had resulted in a loss of revenue for the Majlis. Even though section 10 of the Zakat and Fitrah Rules 1933⁵⁸⁰ clearly stipulates that all collection must be deposited in the bank by the amil, the existence of a poor infrastructure, particularly the road system, compounded by location of a bank accessible only at the state capital, Pekan, had made it almost impossible to remit the money collected on time after the sale of the padi collected to the central fund.

By this time, Pahang's system had been plagued with numerous reports of losses incurred by officially appointed amils, including delays in surrendering the collection by these amils to the Majlis. For instance, during the Japanese invasion of Malaya in 1941, the *Penghulu of Keratong* reported a loss of fitrah collected valued at \$55.25 as a result of the panicking situation in the village at that time. However, the Majlis Anggota Islam in its 13th meeting decided that the amil had to pay for the loss.⁵⁸¹ In a classic case, an amil was reported as losing the whole collection of zakat padi and fitrah when his boat capsized on the way to his destination. However, it was not possible to validate the amil's claim as there was no witness to support his argument. By 1940, numerous cases reported by appointed amils with "Surat Kuasa" on Muslims in Pahang who did not pay zakat and fitrah to the amils appointed by the government were taken

⁵⁷⁹"Secretary of Majlis Anggota Pahang to TBP, 9/6/34"; TBP 119/1935, "Memohon hendak membahaskan peraturan zakat dan fitrah didalam Negeri Pahang", "Kathi Kuala Lipis to TBP, 10/10/35, "TBP to Kathi Kuala Lipis, 17/10/35", all encl. in ANM/KL/TBP 104/1933; "Penyata Pungutan Zakat dan Fitrah 1955" in ANM/KL/TBP 43/56; "Menghantar peraturan zakat dan fitrah didalam Negeri Pahang" in ANM/KL/TBP 116/1935. By middle of 1937, the problems associated with assessing zakat on money saved in the bank had received much attention in Pahang. Cf. "Jawatankuasa Jajahan Pekan to TBP, "Menghantar salinan masalah zakat wang telah di simpan ke dalam bank tiada mengeluarkan zakat, 1/7/37 to 8/7/37", all encl. in ANM/KL/TBP 101/37.

⁵⁸⁰"Peraturan Zakat dan Fitrah, 1933" in ANM/KL/TBP 104/1933.

⁵⁸¹"Minutes of the 13th meeting of the Majlis Anggota Islam Pahang"; encl. in ANM/KL/TBP 27/2602, TBP 8/2602, TBP 40/41, TBP 25/2602.

seriously by the Majlis Anggota Islam Pahang.⁵⁸² In its fourth year of implementation, the problem pertaining to a number of mukim which had obviously failed to submit the collection to the Majlis within the stipulated time set by the Majlis was taken seriously by the President of the Majlis. The problem was also compounded by cases of amils refusing to surrender the collection to the Majlis and refusal by some Muslims in paying their zakat dues to appointed amils.⁵⁸³ Still compounded by its administrative problems, by the end of 1943, the scope of taxation was extended when the collection of zakat on property was initiated.⁵⁸⁴

By the end of 1934 and probably earlier, Johore had already some sort of laws pertaining to the administration of Baitul-Mal to regulate waqf property and nazr.⁵⁸⁵ A year later in 1935, the Religious Advisory Board⁵⁸⁶ through its "Pejabat Zakat Johor" started to formulate some sort of law to regulate the collection and disbursement of zakat. By 1939, \$13, 654.08 cash was collected from fitrah and wholly disbursed to the muallaf, ghārim and ibnussabil in equal portions. In addition, 6325 pikul of rice was

⁵⁸²"Report of Ketua Jawatankuasa Mukim Kuala Lipis to TBP", ANM/KL/TBP 57/1940.

⁵⁸³Correspondences from the President of Majlis Anggota Islam Pahang regarding "Hendak mendapat tahu mukim-mukim yang belum menyempurnakan serahan wang kutipan zakat dan fitrah kali yang ke 3 dan 4, 18/1/39 to 4/10/41" encl. in ANM/KL/TBP 15/39, 5/41, 6/41, 7/41, 8/41, 9/41, 10/41. By the end of 1941, at least five regions (Kuala Lipis, Raub, Temerloh, and Pekan) were being investigated by the Majlis Anggota Islam Pahang for their delay in surrendering the collections. See also President of the Majlis Ugama Islam Pahang to TBP: "Meminta diserahkan wang kutipan fitrah kali ke 7 bagi jajahan Kuantan dan lain-lain Jajahan, 17/8/43" in ANM/KL/TBP 9/42; "Head of Committee of Mukim Pulau Rusa to TBP, "Keingkar seorang amil nama Mohd Tahir menyerahkan wang kutipan zakat padi kali ke 4, recorded 23/1/40 to 8/5/40", all encl. in ANM/KL/TBP 51/40; "Mengadu hal orang-orang Jawa yang beragama Islam Savlon Estate Plantation Mukim Gua Jajahan Kuala Lipis tidak memberi zakat kepada amil yang ada surat kuasa, 11/11/40" in ANM/KL/TBP Head of Committee Mukim Gua to TBP.

⁵⁸⁴President Majlis Anggota Islam Pahang: "Hendak mengutip semua fitrah dan zakat padi dan zakat harta benda (zakat zahir dan batin), 13/5/43 to 14/8/43" in ANM/KL/TBP 9/43.

⁵⁸⁵"Undang-undang Baitul-Mal, Bil. 18 Tahun 1934, passed on 8/11/34", ANM/KL/J/UG 1.

⁵⁸⁶Due to lack of primary sources, it could not be determined when actually the Majlis Igama Islam Johor was mooted and finally created. It was almost certain that the machinery changes from the Religious Advisory Board to become the Majlis Igama Islam Johor would have happened prior to 1949 because in that year the "Undang-undang Majlis Igama Islam Johor" had already been gazetted.. See "Undang-undang Majlis Igama Islam Johor 1949 (Bil. 2 tahun 1949)" in ANM/KL/J/SUK4, *Johore Government Gazette*, 30/10/58.

collected from fitrah alone paid by 168,675 Muslims, of which 50% was immediately disbursed in the form of rice to three asnaf, namely, the fakir (destitute), miskin (poor), and respective amils in equal portions on the first day of Aidil al-Fitri. However, the balance 50% was sold at market value and its equivalent in cash \$13,072.74 was not distributed and kept in a "Zakat Trust".⁵⁸⁷ By this time, part of the revenue generated from zakat was used to finance the operation of religious schools all over the state.⁵⁸⁸

Even though the collection of zakat was very disappointing and relatively small as compared to fitrah, a distinct feature of zakah system in other Malay states, by this time, "Pejabat Zakat Johor" had already collected zakat, not only from agriculture (padi), but also from livestock, money (saving), gold, silver and business. Of the total amount \$1,162.68 collected, only 50% was disbursed to three asnaf. In the final analysis, a total amount of \$13,654.08 (\$13,072.74 + \$581.34) was kept in the "Zakat Fund".⁵⁸⁹

⁵⁸⁷"Penyata Zakat Johor, 1939 (Tahun ke-lima), 3rd June, 1940", ANM/KL/J/UG 1. Statement of fitrah collected in 1939:

Asnaf	No. Of Recipients	Cash (\$13,654.08)	50% in rice (pikul) =3162.65.10 (equivalent to \$13,072.74)
Fakir (Destitute)	3505	-	1054.21.14
Miskin (Poor)	4391	-	1054.21.14
Amils	369	-	1054.21.14
Muallaf	-	\$4,551.36	-
Ghārim	-	\$4,551.36	-
Ibnussabil	-	\$4,551.36	-

Note: 1054.21.14 denotes 1054 pikul, 21 kati, 14 tahlil. One pikul = 100 kati. One kati =600 gm

⁵⁸⁸"Kenyataan bulan-bulan dari guru-guru yang mengajar agama di bayar dari Amanah Zakat, 11/6/39 to 14/1/41" encl in ANM/KL/Pejabat Agama Johor, 348/39, 349/39, 350/39, 351/39, 352/39.

⁵⁸⁹"Penyata Zakat Johor, 1939 (Tahun ke-lima), 3/6/40" in ANM/KL/J/UG 1. Statement of zakat collected in 1939:

Type of Zakat	Amount Collected \$)
Agriculture (padi)	836.02

Legislation and Administration of Zakat Institution in Post-War Malaya

Johore

From its beginnings in 1935, the administration of zakat under the auspices of the *Pejabat Zakat Johor*⁵⁹⁰ had shown remarkable progress. Collections in 1951 had increased significantly compared with those of the 1939 and 1950. However, as in other Malay states, collection from fitrah dominated the statistics, whilst other types of zakat remained at a disappointing stage. It is worth noting that in 1939, an estimated 168,675 Muslims paid their fitrah, whilst in 1950, only 134,654 Muslims had paid, whilst in 1951, only 156,340 Muslims had paid their fitrah. The increase in fitrah between 1939 and 1950 despite a shortfall of 34,021 payers suggests that the rates of fitrah had been increased, probably in conjunction with the current economic indicators. In 1951, 430 of the amils and other staff connected with the administration of zakat were paid from the Zakat and Fitrah Fund.⁵⁹¹ With a policy of not disbursing 50% of the revenue

Livestock (Buffalo, cattle, goat)	5.5
Property/Cash (Saving)/Gold/Silver	219.62
Business	101.54
Total	1162.68

\$581.34 was disbursed by the amils to the three as: Fakir, Miskin and amil. The balance portion supposedly for muallaf, ghārim, and ibussabil, was not distributed and kept as *Amanah Zakat* (Zakat Trust).

⁵⁹⁰The head of the Pejabat Zakat was known as “Nakibulzakat (نقيب الزكاة)“.

⁵⁹¹See page 211; ANM/KL/J/UG 1, “Penyata Zakat Johor, 1939 (Tahun ke-lima), 3/6/40”, “Penyata Zakat Johor, 1951, 9/3/52”. Comparative performance of the Pejabat Zakat Johor in 1935, 1950 and 1951:

Type of Zakat/Collection Year	1939	1950	1951
Agriculture (padi)	836.02	N/A	N/A
Livestock (buffalo, cattle, goat)	5.5	N/A	N/A
Property/cash (saving)/gold/silver	219.62	N/A	N/A
Business	101.54	N/A	N/A
<i>Total of other Zakat Paid</i>	<i>1162.68</i>	<i>3756.62</i>	<i>2379.75</i>
Fitrah (received as cash)	13654.08	N/A	N/A

generated, the Zakat and Fitrah Fund had an accumulated figure of \$93,786.61 by the end of 1951.⁵⁹²

In Johore, the revenue generated from zakat and fitrah was deposited in a fund called *Wang Amanah Zakat dan Fitrah* managed by the Majlis and kept separate from the *Baitul-Mal Fund*. Even though both funds were maintained by the Majlis Agama Islam Johor, effectively they were monitored by the state's Financial Officer and audited by the Auditor-General. In 1958, operating expenditure, maintenance and repair of the

Fitrah (received in kind=6325 pikul)	26145.48	N/A	N/A
<i>Total Fitrah Paid</i>	<i>39799.56</i>	<i>60525.7</i>	<i>81406.39</i>
Total Collection (\$)	40962.24	64282.32	83786.14
No. of Muslims paid fitrah	168675	134654	156340
Percentage increased in collection		56.93%	30.34%

Note: N/A denotes data is not available.

⁵⁹²“Penyata Zakat Johor, 1951”, 9/3/52, ANM/KL/J/UG 1. Statement of Expenditure for year 1950 and 1951:

Asnaf/Year	1950	1951
Fakir (Destitute)	2882.3	3455
Miskin (Poor)	4295.74	5538.7
amils	6996.71	8276.12
Muallaf	400	3455
Ghārim	12931.31	21134.05
Ibnussabil	13783.95	22591.72
Total paid to asnaf (\$)	42772.6	66751.64
Total Revenue (\$)	64282.32	83786.14
Amount not distributed (\$)	21509.72	17034.5

B/f balance in Fund as at 31/12/50

76,752.11

Revenue in 1951

83,786.14

Sub-total

160,538.25

Amt paid to asnaf

66,751.64

Total amount saved in Fund as at 1/1/52

\$93,786.61

Majlis were paid out of the properties and assets of the Baitul-Mal.⁵⁹³ However, during the State of Johore's Supply Budget of 1958, Department of Religious Affairs and Shari'ah Court was allocated a budget of \$2,133,607 out of a State Treasury total budget of \$30,099,031. Compared to the Majlis, this would suggest that the department was part of the government machinery.⁵⁹⁴

By 1957, it was realised that the "Zakat and Fitrah Rules, 1935" need to be revamped to regulate and control the collection of payments. The new rules, after being scrutinised by the State Legal Adviser, were gazetted by the end of 1957. One important feature of the new enactment was found in clause 3 which provided for the establishment of a corporate body called the *Zakat Committee* to collect zakat and fitrah. The committee was to consist of the President of Religious Affairs as Chairman, and the Secretary of Religious Affairs as Secretary-cum-Treasurer, the Mufti and the Chief Kathi as *ex-officio* members and not less than five other members of the Muslim religion not holding office in the Religious Department appointed by the Sultan. Clause 7 enabled the Sultan to create a Zakat Fund out of the collection of zakat and fitrah which might be used at any time for any purpose permissible under Muslim law. Probably following in the footsteps of Perlis, clause 9 made it an offence punishable in the Court of a Kathi to fail to pay zakat or fitrah when due.⁵⁹⁵

⁵⁹³ *Johore Government Gazette*, 30/10/58 for "Undang-undang Majlis Igama Islam Johor 1949 (Bil. 2 tahun 1949)", ANM/KL/J/SUK 4; *Johore Government Gazette*, 12/10/59 "Bait-ul-Mal(Amendment) Enactment, 1959", ANM/KL/J/SUK 4. In 1959, the Baitul-Mal Enactment was amended to enable the Treasurer to accept in his discretion any movable or immovable property in lieu or in part of the cash value of the share of an estate due to the Baitul-Mal. Cf. Ahmad Ibrahim, "Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai", *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia*, 1408 (1988) citing "Enakmen Pentadbiran Agama Islam, Johor, 1978", ANM/KL/BK/UK 7.

⁵⁹⁴ "Supplement to Federation of Malaya Government Gazette, Johore, 15/12/57, pp. 210-211, ANM/KL/J/SUK 4.

⁵⁹⁵ *Johore Government Gazette*, 30/10/58 for "Undang-undang Majlis Igama Islam Johor 1949 (Bil. 2 tahun 1949)", ANM/KL/J/SUK4. Under the Johore Zakat and Fitrah Enactment, 1957 (No. 5 of 1957), all persons liable under Muslim law to pay zakat and fitrah as assessed and fail to pay it would be liable, upon conviction in the Court of Kathi, to a fine not exceeding \$10. Cf. Ahmad Ibrahim, *Islamic Law in Malaya*, (MSRI, Singapore, 1965) p. 348.

In 1962, for no other reason than to increase revenues, the *Zakat and Fitrah Enactment, 1957* was amended to extend the scope of taxation. Zakat was defined to include property (*harta*), agricultural produce (*tumbuh-tumbuhan*), business profit, livestock and gold and silver. Agricultural produce included padi, wheat, maize, and seeds (green peas and soya bean). Livestock included cattle, lambs, and goats.⁵⁹⁶

In an attempt to streamline the administration of the Zakat and Fitrah Committee, the "Zakat and Fitrah Enactment, 1957" was amended again in 1964. Under the 1964 enactment, the officer who was to perform the duties of Secretary and Treasurer of the Zakat and Fitrah Committee need not always be the Secretary to the President Religious Affairs.⁵⁹⁷

In the 1957 enactment, zakat was defined as "a tithe upon his property required to be paid by a Muslim in accordance with Muslim law". For reasons which were not clear, in 1978, a new enactment entitled *Enakmen Pentadbiran Agama Islam, Johor, 1978* was gazetted which repealed the Zakat and Fitrah Enactment, 1957, and had no definition of zakat.⁵⁹⁸ Despite various amendments gazetted by the Majlis to strengthen its position, the revenue generated in the 1980s did not appear to change much. As with

⁵⁹⁶ Ahmad Ibrahim, "Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai", *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, 1408 (1988)*, ANM/KL/BK/UK 7. The calculation of the niṣāb was as follows:

Type of Zakat	Niṣāb	Tax Rate
Gold	minimum 25 mayam 9 saga	2.5% of its weight or value
Silver	minimum 183 mayam (carrat)	2.5% of its weight or value
Saving on money	minimum \$25.73	2.5% of its value.

⁵⁹⁷ *Johore Government Gazette*, 28/5/64, "Zakat and Fitrah (Amendment) Enactment, 1964", ANM/KL/J/SUK4.

⁵⁹⁸ Ahmad Ibrahim, "Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai", *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, 1408 (1988)*, ANM/KL/BK/UK 7.

other Malay states, fitrah was the biggest contributor to the Majlis.⁵⁹⁹

Kelantan and Trengganu

In Kelantan, by early 1952, collections from zakat padi, fitrah and Baitulmal were recorded at local level in one cash book and one ledger book. Administratively, the operation of zakat collection started with one central officer with an assistant, four regional supervisors, and supporting clerical staff. The regional supervisors were responsible not only for the auditing of the collection account but also for supervising matters related to Baitulmal, *suraus*, boundaries of *mukim* etc. Collection of zakat in each mukim was the direct responsibility of the *imam tua* who received their remunerations from part of the 1/5th allocated from the collection.⁶⁰⁰

Under the *Kelantan Council of Islamic Religion and Malay Custom Enactment, 1966*, zakat was defined as a levy on properties such as padi, gold, silver, cash, animals and trading properties or stocks; such a levy payable annually by a Muslim in accordance with Hukum Syarak and in accordance with the provision of the Enactment. In the case of trading properties or stocks, the nisab set by the enactment was identical at \$25.73 to

⁵⁹⁹ Ahmad Ibrahim, *op. cit.* Statement of Revenue Generated from 1982 to 1985:

Type of Zakat/Year	1982 (\$)	1983 (\$)	1984 (\$)	1985 (\$)
Fitrah	2038687	2386745	2474974	2554104
Saving, Gold, Silver	716361	512472	640246	758395
Business Profit	318736	454075	686908	209990
Livestock	1350	1325	Data Not Available	800
Agricultural Produce	10149	10083	13024	8561
Total Revenue	3085283	3364700	3815152	3531850

⁶⁰⁰ Encl. "Secretary, Majlis Ugama Islam dan Istiadat Melayu Kelantan to the Secretary, Pejabat Ugama Islam Perak, 28/1/52", Encl. "Raja Musa Raja Mahadi to Sheikh Ahmad Mohamed Hashim, State Audit Office Perlis, 27/2/52", in ANM/KL/PK. Rel. Dept No. 230/50. In any case, the *imam tua* as an *amil*, was only legally eligible not more than 1/6th (12.5%) of the total collection. Hypothetically, based on this premise, the *imam tua* received 1/6th of 1/5th (20%), which was equivalent to 2.5% of the gross collection.

the nisab set in Johore. For gold, the nisab was set at 20 mithqāl, and silver at 200 dirhams. The tax rates for these items was 2.5%.⁶⁰¹

Probably due to its close proximity to Kelantan, Trengganu's *Administration of Islamic Law Enactment, 1955* had identical definitions for zakat and niṣāb. The *Administration of Muslim Law Enactment, 1964* in that state defined zakat as "a gift required to be made by a Muslim out of his property and income in accordance with Islamic Law".⁶⁰²

Kedah

Kedah was perhaps one of the earliest Malay states that started to modernise its religious administration. In October, 1921, its State Mosque known as Masjid Zāhir was completed after years of construction and in the same year, a modern state religious school called Madrasah Hamīdiyyah was built. In the following year, a secondary modern religious school was built. The idea of creating a centralised system of zakat administration was first mooted by the Chief Kathi, Wan Sulaiman bin Wan Sidik and was agreed upon by the Sultan of Kedah, who appointed a committee to conduct a feasibility study and report on the viability of this project. By 1942, Kedah had a Zakat Committee headed by the Sultan.⁶⁰³

In its initial stage of formation, a *Komiti Agong* (Central Committee)⁶⁰⁴ with its

⁶⁰¹ Ahmad Ibrahim, "Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai", *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, 1408 (1988)*, ANM/KL/BK/UK 7. See also page 217.

⁶⁰² Ahmad Ibrahim, *op. cit.*, pp. 21-22.

⁶⁰³ In 1939, Haji Wan Ismail bin Haji Salleh was appointed as Chairman of the Majma' Sheikhatul Islam, a separate body from the Zakat Committee, to promote compliance and issue advice on matters related to zakat. See Office of Majma' Sheikh al-Islām, 19/9/36. I am indebted to Haji Mohd Salleh bin Hj. Abd Rahman for sight of this document.

⁶⁰⁴ The Central Committee, based in Alor Setar Kedah, was chaired by the Raja Muda, with its members comprising a high ranking Malay officer in the field of agriculture as Vice Chairman, State Treasurer, Head of the Majma' Sheikh al-Islām, Chief Officer of the State Secretariat, and two others. See Office of Majma' Sheikh al-Islām, 19/9/36.

operative machinery called the *Komiti Jajahan* (District Committee),⁶⁰⁵ was created to control and regulate the administration of a new zakat machinery. About half of the members of the nine District Committees were government servants acting on a voluntary and temporary basis until a permanent establishment could be set up. By September, 1936, payment of zakat was accepted the Zakat Committee without any compulsion and without any rules to regulate its operation. However, it appears that a 6-page set of rules to govern the administration of zakat was ready to be enforced by the end of 1936 when the Majma^c Sheikhatul Islam on 19th September, 1936, issued a Notice about this intention.⁶⁰⁶

Section 2 of the rules allowed the creation of a special consolidated fund known as the *Perhimpunan Zakat dan Şadaqah Orang-Orang Islam Kedah*. The system of voluntary zakat and *şadaqah* was based on self-assessment (section 9). Payment would then be remitted to an appointed amil in the qariah who would issue an official receipt.

Basically, the new zakat administration was governed centrally by the Central Committee. However, District Committees were authorised to disposed at their discretion of the padi collected, or zakat and *şadaqah* received in the form of livestock. The cash realised was then deposited in the consolidated Fund.⁶⁰⁷

By mid 1951, the Majlis Ugama Islam dan Adat Istiadat Melayu, Kedah had appointed a three-member committee to formulate a body similar to those in other states that would operate through a Pejabat Zakat to administer the collection and disbursement of zakah and fitrah. At this juncture, the committee even contemplated

⁶⁰⁵The District Committee comprises the District Officer as Chairman, a highest ranking officer in the Land Office as Vice Chairman, the Kathi, and three other members appointed by the Central Committee. See Office of Majma^c Sheikh al-Islām, 19/9/36.

⁶⁰⁶“Notis memberi nasihat ketentuan yang bersangkutan dengan perkara zakat”, pp. 15-17, “Inilah peraturan yang dicadangkan fasal mengadakan perhimpunan rial zakat dan şadaqah orang-orang Islam diNegeri Kedah dan ditafsirkan bagaimana yang hendak dikutip dan dijalankan rial-rial itu, 10/11/36, amended 10/5/38, amended 18/2/41”, Office of Majma^c Sheikhatul Islām, 19/9/36.

⁶⁰⁷“Peraturan Perhimpunan Zakat dan Şadaqah Orang-orang Islam, 10/11/36, amended 10/5/38, amended 18/2/41”, Office of Majma^c Sheikhatul Islām, 19/9/36.

that a penalty for zakat defaulters would be embedded in the proposed enactment.⁶⁰⁸

Despite the examples of Kelantan and Perlis, it was to be another four years before the Pejabat Zakat could be operated legally. On 9th July, 1955, the creation of the Zakat Committee as a corporate body was given legal blessing when the *Undang-undang Zakat No. 4 Tahun 1374 (1955)* was published in the Federal Government Gazette, defining zakat as “a gift required to be made by a Muslim in accordance with Muslim law”, administered and controlled by a committee appointed by the Sultan of Kedah, consisting of a chairman, a secretary, a treasurer and not less than eight other members. Half of the members must be Muslims conversant with zakat law. The committee, was responsible for making rules pertaining to the administration of zakat, and for the collection, division and payment of zakat. However, the committee was only allowed to regulate 50% of the zakat collected. The remaining 50% was supposedly reserved in the Zakat Fund.⁶⁰⁹

As noted, zakat was defined as “a gift required to be made by a Muslim in accordance with Muslim law”. However, in 1962 when the Kedah’s Zakat Rules, 1962 (K.L.N. 58/62)” were gazetted, the scope of taxation was limited to padi. Section 13 provided that “No zakat shall be collected when the total produce of all padi lands planted by a Muslim is less than 2 *kuncha*, 2 *naleh*, 6 *gantang*, 1 *chupak* and 2 *kepol*”.⁶¹⁰ As in other Malay states, collection of zakat from padi commands the coffers of the

⁶⁰⁸Encl. “Undang-undang mentadbir zakat dan fitrah sedang dirangka di Kedah, *Utusan Melayu*, 14/7/51” in ANM/KL/PK. Rel. Dept No. 230/50.

⁶⁰⁹*Federal Government Gazette*, 11/6/55, “Undang-undang Zakat No. 4 Tahun 1374 (1955)”, ANM/KL/Federation of Malaya Government Gazette, 14/7/55. In formulating the “Zakat Rules”, the committee was only authorised to imposed a penalty of \$100 for the breach of any of such rule and a fine of not more \$5 for subsequent breach. See also section 11 (1)(e) of the Administration of Muslim Law (Kedah Enactment No. 9 of 1962), p.27 which appointed the Secretary of the Zakat Committee as a member of the Majlis Ugama Islam Kedah.

⁶¹⁰Ahmad Ibrahim, “Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai”, *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, 1408 (1988)*, ANM/KL/BK/UK 7; “Zakat Enactment, 1955”, ANM/KL/K/SUK 2.

Majlis.⁶¹¹

Malacca

As noted earlier,⁶¹² though the Majlis Ugama Islam Melaka was created in the early 1960s, followed by the setup of eight administrative religious departments, the *Pejabat Zakat, Fitrah dan Baitul-Mal* was able to commence operation of collecting zakat padi and fitrah only in 1961 (Ramadhan 1380). It took about a year for the Majlis to formulate “Zakat Rules” to collect and disburse zakat padi and fitrah under the new administrative mechanism.⁶¹³ A survey conducted by all the officially appointed amils estimated Malaccan Muslims at that time to number approximately 144,709. The Majlis was modest in estimating its revenue for the first time when it set a confident percentage of 74% compliance on the payment of fitrah with about 22% defaulters. In this respect, the Majlis had extrapolated a degree of error in the estimates due to significant abrupt changes in the collection system, aggravated by the numerous varieties of “fitrah beras” that contributed to difficulty in selling the “beras” at nominal market value. It appears that the Malacca Majlis contemplated collecting *zakat harta*, *zakat perniagaan* and *Baitul-Mal* (zakat on property and business, and Baitulmal) but due to the lack of

⁶¹¹ Ahmad Ibrahim, *op.cit.* Brief statement of revenue generated from zakat padi in 1980 to 1985 as reported by the “Pentadbiran Zakat dan Aktiviti Pejabat Zakat Negeri Kedah, Alor Star”:

Year	1980/81	1981/82	1982/83	1983/84	1984/85
Revenue (\$)	1320510	979646	972961	715244	1053448

⁶¹² See page 198

⁶¹³ “Risalah Umum Berkenaan Perjalanan dan Kemajuan Islam di Melaka”, 1/3/63, ANM/KL/M/MUI3; “Penyata Pejabat Ugama Islam Melaka Kali Pertama Tahun 1961”, p. 3, ANM/KL/MUI1; *Government of Malacca Gazette*, 14/2/59, “Administration of Muslim Law Enactment, 1959”, p. 30, ANM/KL/M/SUK 2. A fund known as General Endowment Fund, set up under the provision of section 88(1), is a consolidated Fund comprising all money and property, movable or immovable accrued or was contributed by any person or payable to the Fund. The revenue generated from zakat and fitrah was also kept in the consolidated fund but under separate account.

expertise to administer its daily operation, the proposal was shelved indefinitely.⁶¹⁴

As in Negri Sembilan, during the first year of its implementation, the amount collected from fitrah in Malacca significantly exceeded that collected as zakat padi.⁶¹⁵ From its inception in 1961, revenue generated from zakat padi and fitrah was not distributed in entirety. Cumulative revenue of \$57,808 collected until 1962 was deposited in a special account called *Pentadbiran Am (Baitul-Mal)* [General Administration (Federal Treasury)]. One of the important features of the Majlis Ugama

⁶¹⁴“Penyata Pejabat Ugama Islam Melaka Kali Pertama Tahun 1961”, 1/7/62, p. 3, ANM/KL/MUI1. Estimated Revenue Generated by the Majlis Ugama Islam Melaka in 1961:

Total estimated number of Muslims	144709
Less:	
...Poor = 3,316	
...Indigents = <u>2,289</u>	
Total 5,605 (4 %)	
Estimated number of Muslims estimated to comply	139104
Estimated at 74% Compliance (figure calculated by the Majlis was 74% @ 144,709=107,085)	102937
Number of defaulters (figure calculated by the Majlis was 22% @ 143,814=31,639)	31167

⁶¹⁵“Risalah Umum Berkenaan Perjalanan dan Kemajuan Islam di Melaka--Pejabat Zakat, Fitrah dan Baitul-Mal”, 1/3/63, pp. 4-5, ANM/KL/M/MUI3; “Penyata Pejabat Ugama Islam Melaka Kali Pertama Tahun 1961”, 1/7/62, Appendix 1, 2, ANM/KL/MUI1. Statement of Zakat Padi and Fitrah Collection and Disbursement in 1961.

Year	1961(\$)	1962(\$)
Zakat Padi	7314	13558
Fitrah	105967	95477
Total Income	113281	109035
Expenditure:		
Amil, Ibnu Sabil, and (Fakir and Miskin)	57,108	58,101
Sekolah Ugama Rakyat/Pertubuhan Kebajikan Islam	17,168	22,979
Administrative Costs	5,498	3,654
Total Expenditure	79774	84734
Excess of Revenue over Expenditure	33507	24301

Islam Melaka was its emphasis on the expansion of *Sekolah Ugama Rakyat* of which there were only four schools in the state before the World War II. With continuing financial support, partially from revenue generated from zakat and the Ministry of Education, the number of students by 1962 had increased significantly to 5,723.⁶¹⁶

By 1976, the scope of taxation had been extended, not only to zakat padi and fitrah, but also to property. However, as in other Malay states, revenue generated from fitrah in 1976 to 1979 was the biggest contributor to the *Pentadbiran Am (Baitul-Mal)* [General Administration (Federal Treasury)].⁶¹⁷

Negri Sembilan

In Negri Sembilan, the Legislative Assembly passed an enactment entitled *The Council of Muslim Religion Enactment, 1957* of which sections 54-56 make provision for the method of payment of zakat and fitrah in 1957.⁶¹⁸ However, this proved unpopular

⁶¹⁶“Risalah Umum Berkenaan Perjalanan dan Kemajuan Islam di Melaka--Sekolah Ugama Rakyat”, 1/3/63, ANM/KL/M/MUI3. There were two ways Islam was taught in school: *Sekolah Ugama Rakyat*, and Government- sponsored schools teaching Islam as an elective subject. In 1962, the government sponsored schools, with 29,153 students, received annual financial assistance of \$204, 071 based on \$7.00 per student whilst in 1960, “Sekolah Ugama Rakyat” received an annual financial assistance from the Ministry of Education based on \$10.00 per student and from the Majlis based on calculation of \$3.00 per student. Note: \$17,168/\$3.00 per student = 5723 students.

Note: No statistics on the number of schools was available in the source documents.

⁶¹⁷Ahmad Ibrahim, “Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai”, *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, 1408 (1988)*, ANM/KL/BK/UK 7. Statement of revenue of the Majlis Ugama Islam Malacca from 1976 to 1979:

Year/Type of Zakat	Fitrah (\$)	Padi (\$)	Property (\$)
1976	345868	9384	7192
1977	394756	11036	20185
1978	407743	29185	12699
1979	443019	21748	12347

⁶¹⁸Act No. 1/1957, cited in M.B. Hooker, “Law, Religion, and Bureaucracy in a Malay State: A Study in Conflicting Power Centers”, *The American Journal of Comparative Law*, Vol. 19, 1971, p. 273. Cf. Jawatankuasa Syariah Bahagian Siaran, Jabatan Ugama Negri Sembilan, “Penjelasan Disekitar Hukum Pungutan Zakat Fitrah, 27/2/60”, ANM/KL/N/MUI 3.

among the villagers of one district who regarded voluntary payment as an *‘ādāt* custom with which they contended the legislature had no right to interfere. According to Hooker, much of their resentment was directed against the *Undang* (*‘ādāt Chiefs*) who were constitutionally required to assent formally to the passing of each state bill. The respective *Undang* of the district concerned, however, refused to countenance the protests conveyed to him by the clan chiefs to the extent that he refused to treat with them and attempted to call a meeting of lineage heads over the heads of the clan chiefs who promptly, and validly, dismissed him from office, in a way later on found ineffective.⁶¹⁹

The influence of *‘ādāt perpatih*, still much alive in Negri Sembilan, on zakat administration led to long and bitter conflict over the proposed centralisation of zakat collection and disbursement so that it took three years for the *Negri Sembilan Administration of Muslim Law Enactment, 1960* to be gazetted, replacing the 1957 enactment.⁶²⁰ It appears that the problems encountered by the state’s Majlis Agama, as in other Malay states, in relation to the new centralised zakat system was far from over. As a result of the Majlis’ slow enforcement of the new system, compounded by ignorance and exacerbated by an attitude of complacency among local Muslims, the new system was vigorously argued against and undermined by those ulama who were not members of the Majlis. The most damage done to the noble attempt of the Majlis was when a very comprehensive book entitled *Buku Pertahanan Fitrah Dipaksa* (Against Forced Fitrah Payment) written by one Haji Abdul Wahab from Kampung Mendum, Lenggeng, who was probably representing that group of ulama aforementioned, was

⁶¹⁹In the latter connection, see Articles LXIV, LXV of the Negri Sembilan State Constitution, 1959, cited in M.B. Hooker, *op. cit.*, p. 273.

⁶²⁰*Negri Sembilan Government Gazette*, 15/2/62, p. 4. For short account of the customary law in Negri Sembilan, see Ahmad Ibrahim and Ahilemah Joned, *The Malaysian Legal System* (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1995) pp. 28-29. See also E.N. Taylor, “The Customary Law of Rembau”, *JMBRAS*, Vol. 7, Pt. 1, 1929, pp. 14-55; E.N. Taylor, “Aspects of Customary Inheritance in Negri Sembilan”, *JMBRAS*, Vol. 21, Pt. II, 1948, pp. 41-130; W.E. Maxwell, “The Law and Custom of the Malays with Reference to the Tenure of Land”, *JMBRAS*, Vol. 13, 1884, pp. 75-220, for detailed accounts of customary law in Perak, Pahang and Selangor.

published and publicly circulated at the end of December, 1959. The book's lengthy contents and its attack based on Islamic legal interpretations and meticulous administrative matters, may be enumerated as follows:

- i. Punishment such as jail for zakat defaulters was not Islamic,⁶²¹
- ii. The concept of *Ta'at kepada Pemerintah* (Obedient to God) as promulgated by the Majlis to ensure that all Muslims paid zakat to officially appointed amils was deemed not Islamic,
- iii. The proposed amil's institution was not part of the government machinery in the early Islamic state. As such the "zakat fitrah", which was interpreted as "zakat bātin (spiritual & intangible zakat)", could not be centrally collected by the amil's.⁶²²
- Iv. It was also argued the government had used collection from zakat fitrah for purposes other than the legally permitted eight asnaf.

As a result, at about the same time the enactment was gazetted, the *Yang di Pertuan Besar* as the head of state issued an official brochure *Penjelasan Disekitar Hukum Pungutan Zakat Fitrah* (Further Clarification on the law on zakat collection) to be distributed to every Muslim community in the state to sort out the confusion and misunderstanding that had existed for at least the past three years.⁶²³

As with other Malay states, emphasis was put on the collection of fitrah when in, 1960, the amount collected from zakat was relatively small (\$1,445 compared to fitrah collection of \$46,593). However, the Baitulmal division of the Majlis was

⁶²¹Section 102-104 and 166 of the Negri Sembilan Administration of Muslim Law Enactment, 1960 listed the penalty provisions for zakat defaulters. The legal effect of the provisions were the same as in Selangor. See page 247. See also Ahmad Ibrahim, *Islamic Law in Malaya*, (MSRI, Singapore, 1965) p. 339.

⁶²²Jawatankuasa Shariah Bahagian Siaran, Jabatan Ugama Negri Sembilan, "Penjelasan Disekitar Hukum Pungutan Zakat Fitrah, 27/2/60", ANM/KL/N/MUI 3. In Malaysia context, *Zakat Zāhir* (tangible zakat) is defined as all zakat other than zakat fitrah..

⁶²³Jawatankuasa Shariah Bahagian Siaran, Jabatan Ugama Negri Sembilan, "Penjelasan Disekitar Hukum Pungutan Zakat Fitrah, 27/2/60", ANM/KL/N/MUI 3.

confident that its revenue would increase significantly. Compared to the Majlis Agama itself which was financed by the State Treasury, the Baitulmal was financed from 1960 mainly from revenue generated from zakat and fitrah. Besides allocation to four out of the eight asnaf, these revenues were also used to administer religious schools, suraus and mosques, and for other purposes.⁶²⁴

Perak

By early 1949, Perak had started to formulate machinery to administer religious matters, in particular the enactments and rules governing the collection and disbursement of zakat and Baitulmal.⁶²⁵ Though by the end of the year, Perak had created a *Pejabat*

⁶²⁴*Negri Sembilan Government Gazette*, 29/3/62, p. 67. Statement of Income of Baitul-Mal for 1960 to 1962:

Year	1960(\$)	1961(\$) (estimate)	1962(\$) (estimate)
Zakat	1445	2500	2500
Fitrah	46593	90000	80000
Collection of Property from Fara'id Division	4544	6000	5000
Others including rental income	1651	3000	1800
Total Income	54233	101500	89300
Expenditure:			
Ibnu Sabil (Wayfarers)	2,000	2,000	81030
Amil (those involved in the collection process)	-	-	
Fakir dan Miskin (Poor and Indigent)	-	-	
Muallaf (New Muslim Converts)	-	-	
Administrative Cost of Collecting Zakat/Fitrah		85,399	
Others			
Total Expenditure	2000	87399	81030
Excess Revenue Over Expenditure	52233*	14101	8270

For comparison purposes, see Pahang's basis of distribution to only four as: amil (those involved in the collection process), gharim (debtors), riqab (slaves) and sabilillah (travelers). Disbursement to the other four as were entrusted to the prerogative of the payers.

* Itemised actual expenditure for year 1960 was not recorded in the source document. As such, compared to other years, excess revenue over expenditure, hypothetically, should be much less than the stated figure.

⁶²⁵Footnote 497; Minute Paper No. 30/49, Religious Department of Perak, "Mesyuarat Jawatankuasa Kerja No. 1/49, 3/4/49", enclosure SPK 236/49, 10/8/49, "Secretary of UMNO to Secretary of Sultan of Perak, 18/5/49", enclosure "Secretary of Sultan of Perak to Secretary of UMNO Perak, 23/7/49",

Ugama Islam Perak in Ipoh to act as the administrative arm of the *Majlis Ugama dan Adat Melayu Perak*, its operation was not in proper order since enactments and rules to give legal blessing to its operation had not yet been formulated. The Majlis in its first extremely productive meeting on 23th October, 1949, appointed a committee called the *Jawatankuasa Mengatur Pendirian Pejabat Ugama Perak* (Committee to establish a Department of Religious Affairs, Perak) to propose and to advise the Majlis upon the formulation of necessary regulations and rules pertaining to the administration of the Pejabat Ugama, which would conform with the essence of the regulations governing the functions of Majlis Ugama Islam dan Adat Melayu pursuant to the State of Perak Enactment No. 1/1949.⁶²⁶ Since religion in Perak was a state matter, the state government's machinery was directly involved in the process of the re-organisation of the Religious Affairs Department. In order to expedite the matter, the State Secretary of Perak wrote to State Secretaries of other Malay states requesting information, on pre-formatted printed forms, about the staff establishments of the Majlis of their respective states.⁶²⁷ In November, barely a month after its first meeting, and presumably without all the resolutions passed during the first meeting yet been executed, the Majlis created two interim committees, a *Jawatankuasa Kerja* (Working Committee), consisting of five members with a function not clearly defined, and *Jawatankuasa Kebebasan* (A

ANM/KL/PK. Rel. Dept. During its first meeting, the Working Committee passed a resolution to urge the government to establish as soon as possible a Religious Department with emphasis on zakat and Baitul-Mal. Cf. , Minute Paper No. 145/49, Religious Department of Perak, "Persidangan Majlis Ugama Islam dan Adat Melayu yang Pertama, held on 23/10/49", ANM/KL/PK. Rel. Dept. In Perak, zakat and Baitulmal was administered under one operational department called *Zakat Fitrah dan Baitulmal*.

⁶²⁶Like other Malay states, the proposed rules covered religious education (al-Qur'ān), religious teaching, waqf and education donations, mosque and madrasah, Mufti, Kathi and Assistant Kathi, zakat, fitrah and Baitul-Mal, Shari'ah Courts, and other religious schools (Sekolah Arab and Sekolah Rakyat). "Jawatankuasa Mengatur Pendirian Pejabat Ugama", 11/11/49, ANM/KL/PK. Rel. Dept No. 165/49, Religious Department of Perak; ANM/KL/Minute Paper No. 165/49, Religious Department of Perak; encl. "Penyata Ringkas bagi langkah yang telah di ambil oleh Pejabat Hal Ehwal Ugama Perak, 1951" in ANM/KL/PK. Rel. Dept No. 179/49; Minute Paper No. 145/49, Religious Department of Perak, "Persidangan Majlis Ugama Islam dan Adat Melayu yang Pertama", held on 23/10/49, ANM/KL/PK. Rel. Dept.

⁶²⁷"Multiple letters of State Secretary of Perak to State Secretaries of other Malay states, 20/7/49", ANM/KL/PK. Rel. Dept No. 275/49, Religious Department of Perak; Copy of minutes of the 9th meeting of the Majlis Ugama Islam dan Adat Melayu Perak, held on 14/9/50, ANM/KL/Perak Religious Department 232/50.

General Committee) consisting of three members, to suggest and formulate the scope of duties and responsibilities of all members of the Majlis.⁶²⁸

As a result of the failure of the Majlis in one unnamed state to gain support from the public, the Secretary of Perak's Majlis, in his opening address during the Majlis's fifth meeting on 5th February, 1950, sternly reminded the members of its arduous task and said that it was imperative for the Majlis to show its capacity to administer religious matters efficiently, particularly the implementation of zakat system, in order to gain the undivided trust of the public in general and those ulama who were not members of the Majlis in particular. It was suggested that this could be achieved through mass media and cooperations of the *Jawatankuasa Shariah Bahagian Siaran, Jabatan Ugama Perak* (Shari'ah Committee, Publication Division, Religious Department of Religious Affairs of Perak).⁶²⁹ In April, 1950, *Undang-undang No. 5/1369 (1950)* was finally gazetted.⁶³⁰

The six-member committee *Jawatankuasa Mengatur Pendirian Pejabat Ugama Perak* headed by Raja 'Umar, at its first lengthy and extremely productive meeting on 7th January, 1950, passed a resolution that it was imperative to address the issues of continuous and consistent revenue generation from Baitul-Māl, zakat and fitrah in order to ensure the successful operation of the *Pejabat Ugama*. The committee agreed that the best way to tackle this problem was to seek advice from other Malay states that had efficient Departments of Religious Affairs. Of all the *Pejabat Ugama* of the Malay

⁶²⁸Minute Paper No. 151/49, Religious Department of Perak, "Persidangan Majlis Ugama Islam dan Adat Melayu yang Kedua", held on 12/11/49, ANM/KL/PK. Rel. Dept; Minute Paper No. 194/49, "Surat dibentangkan diatas meja No. 4/1369 dalam Persidangan Majlis Ugama Islam dan Adat Melayu yang Kedua", held on 12/11/49, ANM/KL/PK. Rel. Dept. It worth noting that members of all three interim committees were members of the Majlis.

⁶²⁹Council of Religion and Malay Custom's 5th meeting, held on 5/2/50 and enclosure "Opening address of the Secretary of the Council of Religion and Malay Customs, 5/2/50" in ANM/KL/PK Rel. Dept No. 65/50.

⁶³⁰Religious Department of Perak, *Undang-undang No 5/1369 Tahun 1950*, ANM/KL/PK. Rel. Dept No. 194/49. To ensure efficiency in its administration, the Zakat and Fitrah Laws provide ample provision to prosecute zakat defaulters. Under section 9 (ii), a fine of not more than \$100 might be imposed on person who refused to pay, and not more than \$5 per day hereafter until the due is paid..

states, the *Jabatan Ugama Johor* was selected as a model with Kelantan's system also used as a comparison. At its fourth meeting on 22nd January, 1950, the Majlis unanimously endorsed the recommendations of the committee, including sending two high ranking and experienced officers in March, 1950, to study and explore the operation of *Jabatan Ugama Johor* with partial reference to the administration of Baitul-Māl, zakat and fitrah.⁶³¹ In September, 1950, a draft "Undang-undang Zakat dan Fitrah Tahun No. 5/1369 (1950)" and Baitulmal were tabled to provide for the establishment of a corporate body called the Zakat and Fitrah Committee to administer and control zakat and fitrah. The committee consists of a Chairman, a Secretary, a Treasurer, and not less than eight other members. Under section 7 of the enactment, the committee with the approval of the Sultan may create a reserve Fund out of the proceeds from the collection and sale of zakat and fitrah property.⁶³²

As a result of its meeting on 16th April, 1950, the Majlis on 3rd May, before the celebration of the *Hari Raya Haji*, 1369⁶³³ announced in the Press for the first time some of the resolutions passed on that date and fixed the rate of fitrah in Perak as 5/8 of the government's fixed controlled price of rice of 1950. In conjunction with this announcement, the President of the Majlis took the opportunity to address the public explaining the application of the proposed enactment by referring to the zakat system already implemented in Kelantan. In response to public agitation about the delay, he

⁶³¹“Jawatankuasa Mengatur Pendirian Pejabat Ugama”, 11/11/49, and First meeting of the “Jawatankuasa Mengatur Pendirian Pejabat Ugama Perak” on 7/1/50, in ANM/KL/PK. Rel. Dept No. 165/49; ANM/KL/Minute Paper No. 165/49, Religious Department of Perak.

⁶³²“Minutes of the 9th meeting of the Majlis Ugama Islam dan Adat Melayu Perak held on 14/9/50”, Enclosure “Secretary of Council of Religion and Malays Custom, Perak to Menteri Besar, Perak, 14/11/50” in ANM/KL/Perak Religious Department 232/50; “Minutes of the 12th meeting of the Majlis Ugama Islam dan Adat Melayu Perak held on 16/12/50” in ANM/KL/Perak Religious Department 279/50; “Draft Laws and Rules of Zakat and Fitrah No. 5/1369”, ANM/KL/PK. Rel. Dept, Minute Paper No. 194/49; Enclosure of the Draft “Zakat and Fitrah Enactment, 1369(1950) in ANM/KL/PK. Rel. Dept No. 230/50.

⁶³³Enclosure “Cabutan daripada butir-butir Mesyaurat Jawantkuasa Majlis Ugama Islam dan Adat Melayu yang Ketiga pada 19.7.1949” in ANM/KL/Minute Paper PK. Rel. Dept No. 199/49. The Majlis in its 3rd meeting on 19th July, 1949, passed a resolution to make a an official announcement on the rate of fitrah for 1949. However, due to the acute shortage of time to publish it, the resolution was dropped.

added that the Majlis had found it was too complicated to enforce zakat and Baitul-Māl system immediately without proper enactments and rules.⁶³⁴ In 1951, after comparison with Trengganu's fitrah rate for that year, Perak fixed its fitrah rate at \$1.00 per person, as the price of one *gantang* of rice (one *gantang Baghdad* was equivalent to $\frac{5}{8}$ of the *Malayan gantang*).⁶³⁵

Early in 1951, following correspondence between the Majlis Ugama and Pejabat Ugama Perak with the Jabatan Ugama Johor and the Majlis Ugama Islam Kelantan, the Majlis assisted by the State Secretariat, embarked on the formulation of regulations and rules pertaining to the administration of Baitul-Māl and zakat, based on Kelantan's regulations and rules.⁶³⁶ By March, 1951, attempts to force through the draft were further delayed when the state government, upon the advice of the Legal Adviser, M.G. Neal, rejected it due to legal technicalities. In addition, many of its terms, definitions and descriptions of scope were seen as obsolete and not in conformity with the needs of Perak.⁶³⁷

It was crystal clear that the *Jawatankuasa Mengatur Pendirian Pejabat Ugama* (Committee to Establish a Department of Religious Affairs), appointed in November, 1949 to formulate regulations and rules pertaining to Baitul-Māl and Zakat

⁶³⁴Enclosure "Newspaper cutting of *The Majlis*, 3/5/50" in ANM/KL/Minute Paper PK. Rel. Dept No. 199/49, Religious Department of Perak.

⁶³⁵Enclosure "Pemberitahuan Pejabat Ugama Trengganu Bil. 5/70, Berkenaan Harga Beras Fitrah Tahun 1370, 19/6/51", enclosure "Notice of Rate of Fitrah for the year 1951 in Perak, 25/6/51" in ANM/KL/Minute Paper PK. Rel. Dept No. 199/49. In Trengganu, in 1951, beras fitrah was fixed at \$1.20 per *gantang* of beras, and the Amils were instructed to disburse the collection of fitrah without sending it first to the central account. Disbursement was divided into five equal portions as: destitute, poor, amil, gharib and sabillillah.

⁶³⁶"President of Jabatan Ugama Johor to Secretary of Majlis Ugama Islam Perak, 12/2/50", "Secretary of Majlis Ugama Perak to President of Jabatan Ugama Johor, 20/2/50", "President of Council of Religion and Malay Custom Perak, 18/1/51" in ANM/KL/PK. Rel. Dept No. 165/49; "Vice-President of Majlis Ugama Islam Kelantan to President of Majlis Ugama Islam Perak, 27/1/51" in ANM/KL/PK. Rel. Dept No. 165/49.

⁶³⁷"Minutes of the 14th meeting of the Majlis Ugama Islam dan Adat Melayu Perak, held on 19/3/51", ANM/KL/Perak Religious Department 46/51.

administration, had failed in its mission. About a year later, in November, 1951, a new six-member Select Committee, appointed by the State Council on 16th October, 1951, assisted by the Legal Adviser, was finally able to table all three proposed new laws: *Majlis Ugama Islam dan Adat Melayu Enactment, No. 6 of 1951, Baitulmal, Zakat and Fitrah Enactment, No. 7 of 1951 and Control of Waqf Enactment, No. 8 of 1951*. By early 1952, all the three enactments had been approved and gazetted.⁶³⁸

The scope of the administrative powers conferred on the Majlis in ensuring efficient collection of zakat was quite extensive, and was similar to those gazetted in Selangor.⁶³⁹ Pursuant to the Zakat and Fitrah Rules, 1952 (G.N. 1222/52) gazetted under the provisions of the Baitulmal, Zakat and Fitrah Enactment, No. 7 of 1951, the amils were conferred authority to inspect all *bendang* or *ladang* in his locality. The amil would then make a provisional assessment in respect of those “bendangs or ladangs”, the cultivators of which were in his opinion liable to pay zakat. The amil would then submit, not later than one month before the date of the harvest, through the Zakat and Fitrah Committee to the Kathi in charge of such locality for transmission to the President, a report containing a census of all Muslims who worked *bendang* or *ladang* in the mukim. In default of production by the cultivator of proof of a lesser yield on harvesting, the provisional assessment would be deemed to be *prima facie* proof of the actual yield for the purpose of assessment and collection of zakat.⁶⁴⁰

⁶³⁸“Report of the Select Committee, tabled as Council Paper No. 23/51”, Encl. “Legal Adviser to State Secretary of Perak, 11/2/52” in ANM/KL/PK. Rel. Dept, Minute Paper No. 263/51; Encl. “Penyata Ringkas bagi langkahan yang telah di ambil oleh Pejabat Hal Ehwal Ugama Perak, 1951”, Encl. “Minutes Paper No. 179/49” in ANM/KL/PK. Rel. Dept No. 179/49. For rules of zakat and fitrah, see “Peraturan Zakat & Fitrah, Perak, 1969”, ANM/KL/A/HEUI 5;

Encl. “Raja Musa to Megat Othman, 29/1/51”, Encl. “President, Council of religion and Malay Custom Perak to the Menteri Besar Perak, 11/11/50” in ANM/KL/PK. Rel. Dept No. 230/50. The Majlis Ugama on its meeting 14th September, 1950 passed a resolution to submit the draft enactment to the state government. This was sent to the state government in November, 1950.

⁶³⁹See page 246

⁶⁴⁰Ahmad Ibrahim, “Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai”, *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, 1408 (1988)*, ANM/KL/BK/UK 7.

Early in 1952, the Majlis started to formulate its working procedures for collection of zakat. Raja Musa bin Raja Mahadi as President of the Majlis, planned a visit to Perlis to see how the assessment was conducted out there after the padi harvest in March, 1952. At about the same time, assistance was sought from Kelantan, Johore, and Perlis in formulating Perak's zakat working procedures.⁶⁴¹ In April, the Mufti and Kathi of Perak, the secretary and one other member of the Majlis, were instructed by the Majlis to study the operation of the zakat administration of Perlis for two days, in place of Raja Musa.⁶⁴²

By early 1953, the Pejabat Ugama Perak was operating satisfactorily numerous religious related programmes. Though administrative problems on zakat administration were far from settled, the Majlis boldly announced zakat collection of \$368,099.38 for the first seven months in 1953. It was confident that the total collection would be at least \$600,000. The Majlis remained tight-lipped on its administrative problems even when the Majlis Ulama Perak urged the government to provide a brochure on zakat for public consumption covering the problems encountered since its inception.⁶⁴³

⁶⁴¹Encl. "Secretary, Majlis Ugama Islam dan Adat Melayu Perak to the Secretaries of Pejabat Ugama Johore, Kelantan dan Perlis, 11/1/52", Encl. "Secretary Pejabat Ugama Perlis to the President, Majlis Ugama Islam dan Adat Melayu Perak, 23/2/52" in ANM/KL/PK. Rel. Dept No. 230/50. Accounting and auditing system adopted by Perlis and Kelantan, with its cash book and ledger book, had obviously been sourced from the Colonial Administration through the British Adviser's Office. See also page 217.

⁶⁴²Encl. "Secretary, Majlis Ugama Islam dan Adat Melayu Perak to the Mufti and Chief Kathi of Perak, 1/4/52", "President of Council of Religion and Malay Custom Perak to the Secretary of Pejabat Zakat dan Fitrah Perlis, 31/3/52", Encl. "Megat Othman to Raja Musa, 23/1/51", Encl. "Raja Musa to Megat Othman, 29/1/51" in ANM/KL/PK. Rel. Dept No. 230/50. Megat Othman, currently a member of the Majlis, and previously the Secretary of the Majlis Ugama Islam Kelantan for thirteen years (1918-1930), estimated that the annual revenue of the Majlis of Perak from zakat would be \$250,000 with an operating cost of not more than \$20,000 annually.

⁶⁴³Encl. "Paper cutting of the Strait Times, "Government To Be Asked: Exempt Muslim, 24/9/53" in ANM/KL/PK. Rel. Dept No. 161/53; Encl. "6th AGM of Majlis Ulama Perak, 25/1/53" in ANM/KL/PK. Rel. Dept No. 24/49; Encl. "Penyata Kutipan Zakat, Fitrah, Baitul-Mal dan Kawalan Waqf, 1953, 1/4/54" in ANM/KL/PK. Rel. Dept No. 230/50. Statement of revenue for the year ending 31/12/53:

Zakat Padi	212210.15
Fitrah	305013.51
Total collection	517223.66

Compared to other Malay states, where the collection of fitrah was higher than zakat, Perak was an exception. For reasons which were unclear, the amount collected from zakat was about 30% lower than fitrah.

Two years later, the revenue in 1955 was less than the previous year. The Department of Religious Affairs, which had proudly announced its success in the new zakat system in 1954, due to a high compliance rate and support from all levels in the collection machinery, stated in its annual report in 1957 reported that fewer Muslims had paid their dues in 1955, a fall-off compounded by a drop in the market value of padi and rice. The department reported that only 277,418 Muslims had paid their fitrah out of an estimated 500,000 residing in Perak.⁶⁴⁴ Statistics showed that many padi planters were still practising the old culture by quietly disbursing the zakat due themselves. The problem was further exacerbated by the failure of some of the appointed amils, who did not perform their duties as expected. And though, zakat on property (savings, livestock etc), levied for the first time in 1955, recorded an insignificant revenue of \$110.00, the Majlis had dismissed this as a mere coincidence and said they had no plan to pursue

Less: Operative Expenditure (Salary, administrative costs, etc)	92472.45
Net Revenue for 1953 (\$)	424751.21

The net revenue was divided equally into eight portions representing eight asnaf. However, due to the absence of the asnaf "riqab" in Perak, the net revenue was divided into seven portions with \$60,678.60 for each asnaf..

⁶⁴⁴Encl. "Penyata Kutipan Zakat, Fitrah, Baitul-Mal dan Kawalan Waqf, 1953, 21/5/57" in ANM/KL/PK. Rel. Dept No. 230/50. Statement of revenue for the year ending 31/12/55:

Zakat Padi	90138.81
Zakat on Property	110
Fitrah	245499.33
Miscellaneous Revenue (Rental, leases etc)	871.36
Total collection	336619.5
Less: Operative Expenditure (Salary, administrative costs, etc)	113426.63
Net Revenue for 1953 (\$)	223192.87

\$210,637.40 from the net revenue was divided equally into seven portions representing seven asnaf.

enforcement as the present collection system was still in a turmoil.⁶⁴⁵ Despite the disturbing figures on non-compliance with the Zakat and Fitrah Enactment, mosque officials were paid from the Zakat and Fitrah Fund.⁶⁴⁶

It appears that at the state level, the administration of the new collection agency, based on Western precedents, with its accounts audited by the Director General of Colonial Audit, was working as expected. It was indeed difficult for the Majlis to convince the general public of the positive financial and social impact of the new zakat system if its own collection machinery, the amil's institution at local level in particular, had not come up to expectations. Due to the gravity of the problem, the Majlis had no choice but to drag its agents to the Shari'ah Court. For instance \$4,084.06 of the collection from fitrah in 1954 was only surrendered by some of the amils only in 1955. A few were summonsed to the Shari'ah Court after repeated warnings issued by the Majlis went un-responded. Unfortunately, the final course of action pursued by the Majlis was not taken positively by some quarters of the Muslim population. The Majlis's effort to mend the damage was further dampened by numerous articles entitled *Fitrah Paksa* (Forced Fitrah) published in the Press.⁶⁴⁷

⁶⁴⁵Encl. "Penyata Kutipan Zakat, Fitrah, Baitul-Mal dan Kawalan Waqf, 1953, 21/5/57" in ANM/KL/PK. Rel. Dept No. 230/50. Of 296,500 gantangs of padi (husked rice) collected in 1954, 43,970 gantangs were not surrendered until 1955 by the amils to the Pejabat Zakat. In 1955, only 3,988 Muslims paid their zakat dues. Note: One gantang Baghdad = one Kati and 12 tahils.

Gross Revenue in 1954	296,500 gantangs
Portion not surrendered	<u>43,970</u>
Net Revenue (gantangs)	<u>252,530</u>
=====	
Gross Revenue in 1955	170,191 gantangs
Portion disbursed to amils, destitute and poor	<u>2,558</u>
Balance in-hand sold for cash	167,633 = \$69,087.63
Add: Sale of stock balance of 1954	43,970 = \$21,051.18
Total income from sale of zakat padi	\$90,138.81

⁶⁴⁶Encl. "Extract of minutes of AGM of the Majlis Ulama Perak, 24/1/55" in ANM/KL/PK. Rel. Dept No. 24/49.

⁶⁴⁷Encl. "Penyata Kutipan Zakat, Fitrah, Baitul-Mal dan Kawalan Waqf, 1953, 21/5/57" in ANM/KL/PK. Rel. Dept No. 24/49.

1. First Case	An amil was jailed for a day and fined \$1000.00
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Two years later, probably as a response to public representations, new Zakat and Fitrah Rules were gazetted on 26th December, 1957. It worth noting that by the end of 1957, fitrah collection was in its sixth year and zakat padi in its fifth year of implementation. The Majlis, in an effort to extend the scope of the tax and to increase collections, embarked on an extensive programme to explain the new system of administration and its impact on the development of Muslim affairs in the state. By this time, *zakat harta* (property zakat) was being collected but on a voluntary basis and the revenue generated was relatively small. With the successful collection of zakat padi and fitrah, the Majlis felt it was opportune to start collecting zakat on gold and silver, business, agriculture and livestock. In an attempt to gain acceptance for the new proposals, the Majlis even confirmed that payment of zakat would be allowed as deduction from income tax under the Income Tax Ordinance No. 48/1947, Schedule 14(1)(G).⁶⁴⁸ Subsequently, about a decade later, more comprehensive rules were gazetted in 1969.⁶⁴⁹

2. Second Case	Two amils were jailed for 18 months
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See also page 237 for a similar scenario happened in middle of 1951 in Perlis when the Majlis threatened to take legal action against zakat defaulters.

⁶⁴⁸“Seruan kepada orang-orang Islam Negeri Perak berkenaan dengan zakat yang lain daripada zakat padi dan fitrah, 25/11/57”, ANM/KL/A/HEUI 4, Majlis Ugama Islam dan Adat Melayu Perak. The new items of taxation was suggested as follows:

Type of Zakat	Scope of Taxation
Savings	gold, silver, money
Business (zakat perniagaan)	all types of businesses
Livestock	buffalo (kerbau), cattle (lembu), lamb and sheep (biri-biri)
Agriculture	all types of nuts (kacang) and seeds (bijan), maize,

For a detailed schedule of scope of taxation, cf. Appendix A and B, *op. cit.*, pp. 4-9.

⁶⁴⁹“Peraturan Zakat & Fitrah, Perak, 1957”, “Peraturan Zakat & Fitrah, Perak, 1969” in ANM/KL/A/HEUI 5. The 1969 rules were more extensive in its applications including a detailed description on *niṣāb* and the tax rates. In addition the rules also include the provisions for zakat defaulters. Its scope of taxation was also extended, not only to padi, to agricultural produce, livestock and saving on gold and silver.

Perlis

In Perlis, the poorest and smallest Malay state, a committee called "Jawatankuasa Mengatur Pendirian Pejabat Ugama Islam Perlis (Committee to set up a Religious Affairs Department of Perak)" was created by the Majlis during its first meeting on 23rd October, 1949, to investigate and formulate the administration of the department and salary scales of its staff and officers. Surprisingly Perlis had already a Religious Affairs Department by 1949, fully financed from the revenue generated solely from zakat and fitrah, even though its Council of Religion and Malay Custom was only on the verge of creation. By this year, Perlis's "Zakat and Fitrah and Religious Fund", a semi-government institution and a branch of the Religious Affairs Department under the administration of a committee appointed by the Raja of Perlis, was responsible for the collection of zakat and fitrah. This committee worked under rules passed by the State Council. These rules had been proposed be abolished and substituted by a new "Zakat and Fitrah Enactment"⁶⁵⁰

As in other Malay states, the Perlis's 1949 rules required only zakat from padi. Section 9(i) stipulates that "Any person who works a bendang or huma and gets padi in each season of not less than three kunchas (160 gantangs= 1 kuncha) shall pay his zakat at the rate of 10% of the gross amount of the padi he gets". In addition, the rules provide quite extensive penalty provisions directed toward the amils and zakat defaulters.⁶⁵¹

⁶⁵⁰ ANM/KL/PK. Rel. Dept No. 21/49, 20/7/49; ANM/KL/Religious Affairs Department of Perlis, No. (1A) in SSPs. 332/49; ANM/KL/PK Rel. Dept No. 159/50, "Council of Religion and Malay Custom's 9th meeting held on 27/7/50". By July, 1950, draft Zakat and Fitrah Rules had been tabled in the Majlis's meeting and were submitted to the state government for approval. Subsequently, a committee called "Jawatankuasa Zakat dan Fitrah" to regulate zakat administration was established under the "Undang-undang Zakat dan Fitrah, Tahun 1369 (1949). In 1966, the "Undang-undang Zakat dan Fitrah, Bil. 2 Tahun 1949" was repealed by "Enakmen Pentadbiran Ugama Islam (Pindaan Pertama Bil. 6 Tahun 1966).

⁶⁵¹ "Rules of the Zakat and Fitrah" as conferred by section 9 of the Zakat and Fitrah Enactment, 1369 (1949) effective from 1st January, 1950, encl. in ANM/KL/P.U. PK 230/50. Section 13 stipulates that in the case of failure or refusal to pay, a person is liable to not more than \$100 for the first offence and not more than \$500 for any day for subsequent offence or a term of imprisonment not exceeding six months if the fine remains unpaid for one month. In the case of an amil who wilfully omits from his census persons residing in his locality who have to pay zakat, makes an improper census, fails to issue receipts for zakat payment, section 8(viii) stipulates that he is liable to a fine of not more than \$25. See

As in Kelantan, income from the “Zakat and Fitrah and Religious Fund” was sufficient to finance the administration and operation of, amongst others, Sekolah Ugama (Arabic-language religious schools), waqf and scholarships, a Mufti (the post of Mufti was proposed for 1950), Kathis and mosques. However, assistant Kathis’ allowances came from 50% of the fees chargeable on marriage and divorce.⁶⁵²

By the middle of 1951, in dire need to increase its zakat collection, Perlis’s intention to expand and enforce its “Zakat and Fitrah Enactments and Rules”⁶⁵³ by threatening to jail zakat defaulters had aroused public agitation in Malaya and Singapore, particularly from the poorer section of the Muslim community who were familiar and comfortable with the old localised zakat system in existence since the advent of Islam to the Malay peninsula, which stipulated payment on voluntary basis. Numerous letters sent to various *Utusan Melayu* offices in Malaya and Singapore argued that it was improper to impose severe punishment for zakat defaulters as “Islam do not use force (tidak ada paksaan dalam Islam)”. The Chief Mufti of Singapore, in supporting Perlis’s decision, explained that an Islamic state has the right to impose punishment for Muslims who failed to pay zakat. A spokesman for the Religious Department of Johore, noted that Johore, in contrast to Perlis, did not impose punishment on zakat defaulters.⁶⁵⁴

also Ahmad Ibrahim, *Islamic Law in Malaya*, (MSRI, Singapore, 1965) pp. 346-347.

⁶⁵²ANM/KL/PK. Rel. Dept No. 21/49, 20/7/49; ANM/KL/Relig. Aff. Dept. of Perlis, No. (1A) in SSPs. 332/49.

⁶⁵³“Enakmen Pentadbiran Ugama Islam Pindaan Bil. 4 Tahun 1975”, ANM/KL/R/HEUI 5. For instance, Section 72A, 72B and 72C in “Undang-undang Pentadbiran Ugama Islam Perlis, 1963” address the provisions on zakat. Section 72C deals with an appeal on assessment of not less \$100 to the Appeal Committee. Defaulters were summoned with the form A “Saman Kepada Orang Yang diTuduh”. Failure to attend the court, a warrant of arrest “Borang B (Waran Menangkap)” would be issued by the Shari’ah Court (Mahkamah Kathi) and handed to the State Police for execution of the court order. See Appendix 4.1, Appendix 4.2.

⁶⁵⁴“Gema Fitrah Tindakan Perlis, *Utusan Melayu*, 6/6/51”, “Gema Undang-undang Fitrah Yang Diluluskan di Perlis”, *Utusan Melayu*, 8/6/51, all encl in ANM/KL/Minute Paper PK. Rel. Dept No. 199/49. By this time, Singapore had not formulated any enactments and rules for the administration of zakat. For a detailed account on the concept of “tidak ada paksaan dalam Islam” see *Utusan Melayu*, 8/6/51, also in ANM/KL/Minute Paper PK. Rel. Dept No. 199/49.

It is not clear why such widespread public agitation and fear was aroused in Malaya and Singapore. Kelantan had enforced identical laws about twenty years earlier. *Utusan Melayu*, the Jawi newspaper in circulation until today, in its special column “Ringkasan Ugama (Religion In Brief)” concluded that when the said laws were enforced in Kelantan, the Kelantanese at that time were not yet open minded (*fikiran belum bebas*) and Islamic awareness was in its infancy. Any oppositions or fear about new Islamic laws and procedures enforced by authority were expressed individually and locally without recourse to public channels such as newspapers. The Malays at that time were afraid to voice their feelings or criticise authority. It might be noted that rules regarding fasting, Friday prayers and other religious rituals had been enforced in several Malay states since before the World War II.⁶⁵⁵

It appears that the Perlis Zakat and Fitrah Enactment had not yet passed the acid test. A second wave of widespread objections was mounted by some quarters of the public and the mass media. The public revolts contending that the incidence of taxation imposed by the current enactment did not uphold the basic philosophy of taxation, equity, when only the “struggling to make ends meet” padi planters were taxed with some summons in the Shari’ah Court whilst rich businessman and landlords were effectively not touched by the law. Resulting from this important event, by early of 1952, a draft amendment to extend the scope of taxation was finalised by a sub-committee appointed by the Zakat and Fitrah Committee and submitted to the “Majlis Mesyuarat Kerajaan Perlis” for approval.⁶⁵⁶

⁶⁵⁵“Gema Undang-undang Fitrah Yang Diluluskan di Perlis”, *Utusan Melayu*, 8/6/51, in ANM/KL/Minute Paper PK. Rel. Dept No. 199/49.

⁶⁵⁶“Hartawan-hartawan dan tuan-tuan punya tanah akan di kenakan zakat--Tambahan kepada undang-undang zakat dicadangkan”, *Utusan Melayu*, 20/2/52, in ANM/KL/PK. Rel. Dept No. 230/50.

Pahang

By 1951, it appears that the administrative mechanism of the Majlis Anggota Islam Pahang, a body that had been entrusted with collecting and disbursing zakat, was not able to operate efficiently without a proper administrative power to collect zakat.⁶⁵⁷ During this year, the task of collection and disbursement of zakat in Pahang was totally transferred to the Jabatan Ugama Islam (Pejabat Zakat),⁶⁵⁸ an administrative arm and the tax collector of the Majlis Ugama Islam. By this time, the Jabatan Ugama Islam still could not carry out its new task pending the approval of the already drafted “Undang-undang Tubuh Majlis Ugama Islam dan Istiadat Melayu Pahang” which the members of the Majlis believed to be more sophisticated and extensive in its scope and applications, including the rules on zakat and fitrah. In its initial stage, the operation of the Majlis with its 21 staff and officers, was wholly financed from the proceeds of zakat. By February, 1951, a draft bill modeled on Perlis State Enactment No. 2 of 1949 (Kelantan’s Administration of Mohammadan Law, 1951 published in Kelantan G. N. No. 174 of 19th December, 1950 was also referred to) to legalise the draft scheme for collecting zakat and fitrah was approved during the Majlis third meeting on 6th December, 1950.⁶⁵⁹ One important feature of the bill, as in Perlis’s Zakat Rules, was that the draft bill includes provisions to impose severe punishment for zakat defaulters. Under the proposed enactment a corporate body called the Zakat and Fitrah Board of Trustees was to be created with the head of the Religious Affairs Department as Chairman. A special reserve fund would also be created out of the proceeds from the

⁶⁵⁷Perak’s Majlis Ugama and the State Secretary had written to a few Malay states for assistance in upgrading its Religious Affairs Department’s administrative machinery. See page 227.

⁶⁵⁸During the Majlis’s first extremely productive meeting on 17/3/50, after a series of deliberations, a resolution to establish a Department of Religion and Malay Customs was unanimously passed and would be submitted for approval by the Sultan of Pahang. It was on the strength of this resolution that the department was established on 1/2/51. For a detailed account on the establishment of the Pejabat Ugama Islam, see page 200, and footnote 560, 575. See also “Copy of Minutes of the Fourth Meeting of the Majlis Ugama Islam dan Adat istiadat Melayu held on 28/5/51” encl. in ANM/KL/No. 19A in P.U. & A. Phg. 56/51.

⁶⁵⁹Draft bill encl. in “S.S. Pahang to S.S. Kelantan, 20/2/51”, ANM/KL/P.U. & A. Phg. 233/51. Further correspondence in “S.S. Kelantan to S.S. Pahang, 25/2/51, 12/3/51” in ANM/KL/Phg 2226/50; “Head of Relig. Aff. Dept. to S.S. Pahang, 26/2/51, 26/4/51” in ANM/KL/No. 1 in P.U. & A. Phg. 89/51; “S.S. Pahang to Head of Relig. Aff. Dept., 17/4/51, 8/5/51” in ANM/KL/No. 11 in Phg. 2226/50.

collection of and sale of zakat and fitrah property. The Board was also permitted to use the fund at any time for any purpose permissible under Muslim law. However, the resolution had failed to appoint a sub-committee to shoulder the responsibility.⁶⁶⁰

By May, 1951, the draft *Undang-undang Zakat and Fitrah* was still being discussed during the Majlis fourth meeting. At this juncture, the State Secretary felt that it was necessary for Pahang to adopt Kelantan's compilation of all laws and rules pertaining to Muslim matters in Kelantan. As a result of this recommendation, the President of the Majlis issued a directive to the Legal Adviser to follow Kelantan's example.⁶⁶¹ By the end of 1951, revenue generated from zakah and fitrah was satisfactory, and as in other Malay states, amount collected from fitrah exceeded significantly that from zakat padi.⁶⁶²

By the end of 1954, it appears that the zakat system in Pahang had operated efficiently when the Majlis's meeting on 12th October, did not raise any issues concerning zakat administration except with respect to the "Surat Kuasa" (J. I. Pahang

⁶⁶⁰“Head of Relig. Aff. Dept. to President of Council of Religion and Malay Customs, 15/2/51" encl. in ANM/KL/No. 6 in P.U. & A. Phg. 14/1951. By December, 1950, draft bill on Zakat and Fitrah Rules had been discussed during the Majlis first and third meetings. During this meeting, it was decided to set the nisab for zakat padi 400 gantangs and zakat fitrah at one gantang of rice (beras). Cf. "Copy of Minutes of the Third Meeting of the Majlis Ugama Islam dan Adat istiadat Melayu held on 8/12/50", "Notices issued with regard to zakat, issuance of the surat kuasa to imams and bilals and their salary scales, etc, of by the Majlis dated 6/12/50" in ANM/KL/No. 19 in P.U. & A. Phg. 14/1951.

⁶⁶¹“Copy of Minutes of the Fourth Meeting of the Majlis Ugama Islam dan Adat istiadat Melayu held on 28/5/51" in ANM/KL/No. 19A in P.U. & A. Phg. 56/51.

⁶⁶²“Hasil zakat dan fitrah di Pahang bagi tahun 1951, *Utusan Melayu*, 4/3/52" in ANM/KL/PK. Rel. Dept No. 230/50, Religious Department of Perak. Statement of Revenue for Pejabat Zakat Pahang for 1951:

Source of Revenue	Collection (\$)
Zakat Padi	9574
Beras Fitrah	30398
Others, including revenue from agricultural produce, rental property	15215
Total Collected (\$)	55187

209/53).⁶⁶³ By 1955, the Pejabat Zakat had expanded its operation with the intake of three new officers to manage 361 amils for the whole of Pahang.⁶⁶⁴ Again, similar to other Malay states, a distinct feature of the zakat system was that the amount of fitrah collected exceeded zakat padi, accounting for 66.9% of the total revenue.

According to Shari'ah law as practised in Pahang, the revenue collected from zakat padi and fitrah, banked with the Mercantile Bank in Pekan, was disbursed by the department to four asnaf only: amil (those involved in the collection process), gharimin (paying for debtors for certain debts), al-riqab(freeing of slaves) and fisabilillah (travelers in the casue of God).⁶⁶⁵ The other four asnaf were entrusted to the prerogative of the payers who would distribute himself. It worth noting that it had been the practice in Kedah and Pahang to revert the remaining four parts of the collection of zakat into the payers' qariah (locality of payers), commonly known as *zakat masyarakat*, which was distributed by the payer himself. The proceeds from zakat were also used to sustain the operation of mosques, "religious classes (kuliah agama)" and "madrasah rakyat (religious schools)" which had a common feature with the "Sekolah Agama Rakyat" in

⁶⁶³“Mesyuarat Majlis Ugama Islam dan Adat Istiadat Melayu Pahang pada 12/10/54”, ANM/KL/T.B.P. No. 50/54.

⁶⁶⁴ “Penyata Atas Pungutan Zakat dan Fitrah Tahun 1955”, 1/7/56, pp. 1-4, 12-13, ANM/KL/Majlis Ugama Islam Dan Istiadat Melayu Pahang, Bahagian Ugama Pahang. Statement of Revenue for Pejabat Zakat Pahang for 1955:

Source of Revenue	Collection (\$)	%
Zakat Padi	19890	29.2
Beras Fitrah	45549	66.9
Rental Property	1863	2.7
Others, including revenue from agricultural produce	772	1.2
Total Collected	68074	100

⁶⁶⁵See also footnote [624](#).

Malacca.⁶⁶⁶

The new administration (Pejabat Zakat) reported in 1956 that the problem of ‘amils faced by the previous administrator, the Majlis Anggota Islam, was still plaguing them. A major portion of the zakat collected had not been remitted to the respective regional Kathis. As a result, revenue collected in April, 1955 [Ramadhan, 1374] by Pejabat Zakat in Pekan could not be distributed until July the following year. After being investigated by the Pejabat Zakat, the amils contended that it was difficult to travel great distances due to the poor communications in Pahang compounded by the spiraling cost of traveling expenses they had to incur to send the money to the “Pejabat Kathi Daerah”. Another common practice among the Malays was the payment of zakat padi and fitrah in the form of padi and beras, strictly following the Shāfi‘īte’s doctrine, rather in its equivalent current cash value. This resulted in great difficulty for the amils in selling the merchandise so that they could remit cash to the regional Kathi’s office. To overcome these problems, the Pejabat Zakat reorganised the amils’ territorial responsibilities so that their jurisdiction was within the proximity of the regional Kathi’s

⁶⁶⁶“Penyata Atas Pungutan Zakat dan Fitrah Tahun 1955”, 1/7/56, pp. 4, 6, 12-13, ANM/KL/Majlis Ugama Islam Dan Istiadat Melayu Pahang, Bahagian Ugama Pahang; Interview with Hassan Basri Mat Dahan on 25/1/98. He has experienced the practise in Kedah being the son-in law of Haji Mohd Salleh Haji Abd Rahman who is the information officer with Pejabat Zakat Kedah. See also Yūsuf al-Qarāḍawī; *Fiqh al-Zakat*, pp. 545-645 for detailed account of the eight as. Statement of Expenditure of Pejabat Zakat Pahang in 1955 based on the distribution portion of the four asnaf:

Classification of Expenditure	Amount (\$)	%
Salaries and Allowances	34923	51.3
Amil	8549	12.6
Administrative Costs/Maintenance/Repair/Utilities/Bank’s Commission/Religious Classes (Kuliah) and Madrasah Rakyat	9292	13.6
General Assistance (Bantuan Am)	10940	16.1
Balance-in-hand	4370	6.4
Total	68074	100

Similar to Malacca, the Madrasah Rakyat was given an operational budget allocation of 50 cents per student.

office.⁶⁶⁷

In the following year, in 1956, the Pahang's Administration of Islamic Law Enactment was amended by the inclusion of a penalty clause directed towards the taxpayers rather than the inefficient administrative machinery. The penalty provisions had exactly the same legal impact as in Selangor, Kelantan, Trengganu, Malacca, Penang and Negri Sembilan except that in Pahang, the jail term was extended to not more than one month compared to seven days in the other states.⁶⁶⁸

Penang and Wilayah Persekutuan

For Penang and Province Wellesley with no Malay sultan (and with Muslims in the minority), the *Yang di Pertuan Agong* is the head of State. On 14th May, 1959, the *Administration of Muslim Law Enactment of Penang and Province Wellesley, 1959 (No.3 of 1959)* was gazetted by the State Council with zakat referred to generically as property, as in Selangor, Perlis and Perak viz.: "Zakat on certain property that is payable annually in accordance with the Muslim Law".⁶⁶⁹ As with some other states, Penang and Province Wellesley's *Administration of Muslim Law Enactment, 1959* makes provide provisions for failure to pay zakat. Under section 164(1) of the enactment, any person, liable to zakat and not in receipt of any exemption on its assessment pursuant to section 103, who refuses to pay, is liable to imprisonment of not more than seven days

⁶⁶⁷"Penyata Atas Pungutan Zakat dan Fitrah Tahun 1955", 1/7/56, p. 8, ANM/KL/Majlis Ugama Islam Dan Istiadat Melayu Pahang, Bahagian Ugama Pahang.

⁶⁶⁸Section 102-104 and 172-173, Pahang Administration of Islamic Law Enactment, 1956; Section 114-122 and 193-194, Kelantan Council of Religion and Malay Custom and Kathis Courts Enactment, 1953; Section 72-80 and 152-153, Trengganu Administration of Islamic Law Enactment, 1955; Section 101-103 and 163, Malacca Administration of Muslim Law Enactment, 1959; Section 101-103 and 164, Penang Administration of Muslim Law Enactment, 1959, all cited in Ahmad Ibrahim, *Islamic Law in Malaya*, (MSRI, Singapore, 1965) pp. 340, 342. See also page 247 and 225.

⁶⁶⁹"Undang-undang Pentadbiran Ugama Islam Pulau Pinang, 1959", section 101, 102, 103, Administration of Muslim Law Penang and Province Wellesley (No. 3 of 1959) pp. 37-38, ANM/KL/W/PU1. Cf. ANM/KL/*Federation of Malaya Government Gazette, Selangor*, 5/12/52, "Administration of Muslim Enactment, Selangor, No. 3 of 1952"; The Administration of Muslim Law (Fitrah and Zakat) Rules of Selangor, 1953; ANM/KL/W/PU1 "Undang-undang Pentadbiran Ugama Islam Pulau Pinang, 1959".

or a fine of not more than \$100.⁶⁷⁰

By 1979, by virtue of the “Peraturan-peraturan pungutan zakat dan fitrah Negeri Pulau Pinang 1979 (Pg. P.U. 29/81), zakah was defined as *Zakat harta-benda yang tertentu yang kena dibayar pada tiap-tiap tahun mengikut Hukum Syarak jika cukup nisabnya* (Certain property that is liable to to tax annually according to Islamic law provided its nisab has been satisfied). In addition, the scope of taxation of zakat was extended to trading properties, livestock, agricultural produce, monetary saving and business profits.⁶⁷¹

In the Federal Territory of Kuala Lumpur, the earlier *Enakmen Pentadbiran Hukum Syarak, 1952, Selangor* (Selangor Administration of Islamic Law Enactment) was later modified on creation by the *Perintah Wilayah Persekutuan, 1974*. New rules to regulate and control zakat and fitrah collection and disbursement was later formulated, gazetted as *Peraturan Zakat dan Fitrah, 1974*. Compared to other Malay states which focus on the collection of zakat padi, Kuala Lumpur’s Rules lay emphasis on the collection of *zakat harta* (property zakat), business profit, and fitrah.⁶⁷²

Selangor

In Selangor, the Administration of Muslim Law (Fitrah and Zakat) Rules, 1953, were gazetted on 7th January, 1954 under section 108 of the Administration of Muslim Law Enactment, 1952. Its system of accounting, audited by the Federal Audit of Malaya, and its administration, as with the other Malay states, denote its British origin. Selangor,

⁶⁷⁰ Administration of Muslim Law Enactment, Penang and Province Wellesley (No. 3 of 1959).

⁶⁷¹ Ahmad Ibrahim, “Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai”, *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, 1408 (1988)*, ANM/KL/BK/UK 7.

⁶⁷² Ahmad Ibrahim, “Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai”, *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, 1408 (1988)*, ANM/KL/BK/UK 7.

like other Malay states, imposed zakat of 10% only on padi, with a nisab of 480 gantangs, with, in addition, “fitrah beras”.⁶⁷³ Rule 9 provides that “Immediately after the harvest if the cereal crop of land in the ownership of one person exceeds 480 gantangs the registered owner of the land shall hand over 10% of such crop to the Majlis”. In addition, Rule 13 provides that “It shall be the duty of the owner of any cereal crop to supply a return thereof to the Majlis or its duly authorised representatives when called upon to do so verbally or in writing”.⁶⁷⁴

Strictly speaking, according to Shari’ah rules, the 10% tax is exacted only from padi fields naturally irrigated, as compared to artificially irrigated fields, where, the tax is 5% of the yield.⁶⁷⁵ It seems that Western precedents posed a great deal of difficulty to regional Kathi offices in administering zakat as stipulated by the zakat rules. These administrative problems, compounded by the Majlis’s appointed āmils consisting of, amongst others, the “Sidang (village head)” and the “imam (head of congregation in the mosque)”, who frequently mis-accounted the collection, were highlighted when the State Auditor, a year after the enforcement of the Administration of Muslim Law (Fitrah and Zakat) Rules, 1953, made specific accounting-related comments pertaining to the immediate issuance of official receipts upon receipt of zakat payments, requiring that official receipts be signed by the issuer, and the receipt and its copy be counter-signed by another officer.⁶⁷⁶ In 1955, probably as a result of the amils not being given access

⁶⁷³“Administration of Muslim Enactment, of Selangor, No. 3 of 1952”, in ANM/KL/ *Federation of Malaya Government Gazette, Selangor*, 5/12/52; The Administration of Muslim Law (Fitrah and Zakat) Rules of Selangor, 1953; Ahmad Ibrahim, “Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai”, *Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia*, 1408 (1988), in ANM/KL/BK/UK 7.

⁶⁷⁴Ahmad Ibrahim, *op. cit.*, in ANM/KL/BK/UK 7.

⁶⁷⁵Yahyā b. Ādam; *Kitāb al-Kharāj*, Shemesh, A. Ben; *Taxation in Islam*, vol. I, pp. 77-82, citing ḥadīths on the rules of zakat of 10% and 5% on land, crops and fruits. For further details, see Chapter 1.

⁶⁷⁶“Secretary, Religious Affairs and Shari’ah Court Department of Selangor, Klang to the Kathi, Sabak Bernam, 11/2/55”, ANM/KL/Pejabat Ugama Islam Sungai Besar, No. (12) in R.A. & Courts Sel.: 541/53;

“Haji Yaacob al-Fekry, Sekolah Ugama Sungai Ayer Tawar to the Kathi, Sabak Bernam Office, 20/6/55”, ANM/KL/Pejabat Ugama Islam Sungai Besar, 20/55 (Hal Ehwal Zakat & Fitrah 1955-56);

to the land for assessing the liability of the taxpayer, the Administration of Muslim Law (Fitrah and Zakat) Rules, 1953 was amended to give amils legal power to enter any land for the purpose of making provisional assessment.⁶⁷⁷ In addition, the 1955 amendment gave extra power to the Majlis to expedite the process of ascertaining the tax liability of the taxpayer. It was provided that the owner of the land or firm, or his proxy must submit a full statement of his assets and liabilities at the end of the firm's financial year. After the zakat had been assessed by the Majlis and a notice served upon or sent by registered post to the person who was the subject of the assessment or his proxy, the taxpayer had to pay the Majlis within 30 days from the date of the notice, unless the Majlis had permitted a longer extension of time.⁶⁷⁸

By about seven years later after the enforcement of the first zakat rules, in May, 1960, the new collection and disbursement system proved to be almost a failure. Up to this time, the Majlis had been very considerate in not fully enforcing the penalty provisions conferred under the Administration of Muslim Law (Fitrah and Zakat) Rules,

"Jabatan Ugama Sungai Besar to Mohd Yusof bin Long, Sidang Parit 8, Sungai Besar, 17/7/61: "Peringatan Yang Akhir"", ANM/KL/Pejabat Ugama Islam Sungai Besar, Bil. 70 dlm Kadzi Sg. Besar 8/60 (Berkenaan Zakat & Fitrah, 1960);

"Majlis Ugama Islam dan Adat Istiadat Melayu Selangor to the Kathi, Sungai Besar, 6/7/61", ANM/KL/Pejabat Ugama Islam Sungai Besar, Bil. 42 dlm M.U.I. Selangor 44/59; For instance after a series of letters issued by the Religious Department to Mohd Yusof bin Long who had remitted the collection short of \$97.50 for period between 1960 to 31/7/61, the department threatened to sue the "Sidang" in the Shari'ah Court. In the case of Haji Yaacob al-Fekry, as head of the āmil, of the total collection \$334,980 in 1955, only \$167,490 had been remitted to him. He contended that the \$167,490 had been withheld by various "Sidang", "Imam" and assistant āmils, even though he had tried many times instructed them to come forward to handover the rest of the collection. He suggested to the Kathi Office that the "Surat Kuasa" be revoked to those who had wilfully failed to perform their tasks. In addition, he requested the Kathi Office to allow him to elect assistant amils personally without going through the normal procedures.

⁶⁷⁷There were instances amils who were obstructed from carrying their duties by potential taxpayers who were probably not willing to comply with the new centralised zakat.

⁶⁷⁸Administration of Muslim Law (Fitrah and Zakat) Rules, 1955 (G.N. 428/1955), cited in Ahmad Ibrahim, *op. cit.*, ANM/KL/BK/UK 7. The additional provision states that, "It shall be lawful for any Collector or representative of the Majlis duly authorised in that behalf to enter upon any cultivated land in the possession of a Muslim for the purpose of taking a census of the cereal crops growing or harvested upon such land. It shall be the duty of the person in possession of such land and of the owner thereof, to give any information and particulars relating to such land and to such crops if required to do so by such Collector or representative".

1953. Revenue generated from zakat padi and fitrah since 1959 had dropped significantly. Investigation by the Majlis showed that this was due to the refusal of farmers and padi planters to surrender zakat to the appointed amils. Tax liability was instead being personally disbursed by the payer. On 1st May, 1960, the Majlis in a Notice to all farmers issued a stern warning and threatened to sue those farmers who refused to surrender their zakat dues according to the provisions vested in the Administration of Muslim Law (Fitrah and Zakat) Rules, 1953. Legal proceedings would be instituted unless they surrendered the dues not later than one month from the date of the Notice.⁶⁷⁹

It worth noting that quite extensive penalty provisions under sections 107-109 and 173 had been embedded in the Selangor Administration of Muslim Law Enactment, 1952. These provided a legal avenue for the Majlis to exact the assessed zakat and fitrah, and any such objection by the payer on the assessment would not be entertained by the court. Any Muslim who being liable to pay any zakat or fitrah and having failed to procure the cancellation or modification by the Majlis of such liability, refused or wilfully failed to pay the assessed zakat or fitrah, and any Muslim who incited or persuaded any person professing the Muslim religion to refrain from paying zakat or fitrah could be punished with imprisonment for a term not exceeding seven days or with a fine not exceeding \$100. In addition, the conviction for failure to pay did not extinguish the debt.⁶⁸⁰

Despite the harsh punishment provided in the enactment, the resistance mounted by the farmers was tremendous. There was no doubt that the poor response by the farmers toward the new system might have been attributable to and exacerbated by the gross inefficiency of the collection machinery, including its set of rules, which were

⁶⁷⁹Notice issued by the Majlis "Pemberitahuan dan seruan yang akhir kepada pesawah dan penanam padi Negeri Selangor, 1/5/60", in ANM/KL/Pejabat Ugama Islam Selangor 217/60.

⁶⁸⁰Selangor Administration of Muslim Law Enactment, 1952, as amended by the Administration of Muslim law (Amendment) Enactment, 1961, (No. 7 of 1961); Ahmad Ibrahim, *Islamic Law in Malaya*, (MSRI, Singapore, 1965) p. 337.

extremely difficult to comprehend by the layman. As a result of numerous reported cases of delay and in certain cases failure to remit the collection by appointed regional head amils, even after a final warning by the Kathi's Office, the Majlis in its meeting on 1st November, 1960 embarked on drastic changes in the collection machinery when it passed a resolution that the posts of "Penyelias Zakat Bagi Tiap-tiap Daerah (Regional zakat Supervisors) previously held by the regional Kathis" be replaced by "Muballigh Uagama (Religious Missionaries) with effect from 1st January, 1961.⁶⁸¹

By July, 1962, it appears that the scope of taxation had been extended from "husked rice" to business property (*harta perniagaan*) and business profits (*kedai sharikat*). Pursuant to section 16 of the 1952 rules, zakat on these items were imposed at the rate of 2.5% within 30 days after tax liability had been assessed.⁶⁸² Quite similar to the system practised in some of the other Malay states, only 50% of this collection was to be remitted to the consolidated fund even if the payer was a businessman or a company. The rest was to be distributed according to the prerogative of the payer but limited to the eight *asnaf* as provided for under the "Undang-undang Uagama Islam Tahun 1952".⁶⁸³ In a Notice issued by the Majlis in 1959, the Majlis set the *niṣāb* for zakat padi as 48 *gantangs* for every lot of the field (three acres) but it was up to the prerogative of the farmers to disburse if the yield was much more than 48 *gantangs*. The mathematical formula of the disbursement for every *niṣāb* could be tabulated as follows:⁶⁸⁴

⁶⁸¹"Circular issued by the Majlis to Regional Religious Missionary, 6/12/60", ANM/KL/Pejabat Uagama Islam Selangor 217/60.

⁶⁸²"Kenyataan Undang-undang Zakat Di bawah Undang-undang Pentadbiran Uagama Islam Negeri Selangor No. 3 Tahun 1952", ANM/KL/ Pejabat Uagama Islam Sungai Besar, 81/62(Z).

⁶⁸³Appendix 4.4. See also pages 209 and 220 for a similar system of distribution of zakat collected in Pahang and Kedah; "Majlis Uagama Islam dan Adat Istiadat Melayu Selangor to Secretary, Sharikat Kilang Padi, Bekerjasama, Sungai Besar, 12/10/60", ANM/KL/ Pejabat Uagama Islam Selangor, Bil. 3 dlm M.U.I. Selangor 986/60 (Z).

⁶⁸⁴Notice issued by the Majlis "Pemberitahuan dan seruan yang akhir kepada pesawah dan penanam padi Negeri Selangor, 1/5/60", ANM/KL/Pejabat Uagama Islam Selangor 217/60.

$\frac{3}{8}$ (18 gantangs) be retained by the Majlis towards consolidated fund.

$\frac{5}{8}$ (30 gantangs) be distributed as follows:

- a. $\frac{1}{8}$ be allocated to the fakir (destitute)
- b. $\frac{1}{8}$ be allocated to the miskin (poor)
- c. $\frac{1}{8}$ be allocated to the assistant amils
- d. $\frac{1}{4}$ be allocated to the benefit of the people in the locality (qariah) where it was collected.⁶⁸⁵

Faced with a dire need to increase collection, the Majlis issued a Notice in July, 1962 explaining the taxpayer's responsibility on his tax liability. In addition, in an attempt to promote compliance, the existence of a relief provided under section 14(g) of the Income Tax Ordinance, 1947, was also highlighted.⁶⁸⁶

Definition of Baitulmal--With Reference to the Malay Peninsula

The term Bayt al-Māl, spelt variably in Malay as Baitulmal, Baitul-Māl, Baitul-Mal, or Bayt ul-Māl, is the generic term used in the Malaysian context to refer to the "Treasury of the Muslims". In contrast to the definition used in the early Islamic state, when it referred to a full fledged State Treasury to receive all revenues from zakat, *kharaj*, *jizyah*, *fay'*, *ghanima* etc., in the Malaysian context, zakat was kept as a separate account and subject to separate treatment under the jurisdiction of "Pejabat Zakat".

Though the Baitulmal derived its revenues mainly from the proceeds of *waqf*, *nazr*⁶⁸⁷ and the properties left by persons dying without heirs,⁶⁸⁸ and the book value of

⁶⁸⁵"Qariah" or "Qariah Masjid" means the area prescribed by the Majlis in accordance with the provisions of the Enactment of respective Malay states within which a mosque is situated. "Administration of Muslim Law Enactment, 1959", p. 4, ANM/KL/M/SUK 2/*Government of Malacca Gazette*, 14/2/59.

⁶⁸⁶Appendix 4.3--Relief Provided under section 14(g) of the Income Tax Ordinance, 1947.

⁶⁸⁷Waqf refers to the detention of a property in the ownership of God and devoting its usufruct in charity. Nazr refers to a pledge to God wholly or in part for the benefit of the Muslim community generally or part thereof, as opposed to an individual or individuals.

⁶⁸⁸Ahmad Ibrahim, *Islamic Law in Malaya*, (MSRI, Singapore, 1965) p. 290.

its assets and income-producing assets might together be worth much more than zakat and fitrah revenues, the inefficiency of its administrative machinery and the complexity associated with it had given it a secondary role in relation to zakat and fitrah.

A more structured form of Baitulmal, based on Western precedents, became more prominent starting the 1950s in Malaysia. The formation and scope of all Baitulmal in the Malay States were defined in a given state's religious administration law. These enactments may be listed as follows:⁶⁸⁹

Malay States	Law governing Baitulmal
Perak	Bait ul-Mal, Zakat and Fitrah Enactment, 1951 (No. 7 of 1951)
Selangor	Administration of Muslim Law Enactment, 1952
Kelantan	Council of Malay Religion and Custom and Kathis Courts Enactment, 1953
Trengganu	Administration of Islamic Law Enactment, 1955
Pahang	Administration of the Law of the Religion of Islam Enactment, 1956
Johore	Bait ul-Mal Enactment (Enactment No. 136 as amended by No. 14 of 1959)
Malacca and Penang	Administration of Muslim Law Enactment, 1959
Negri Sembilan	Administration of Muslim Law Enactment, 1960
Kedah	Administration of Muslim Law Enactment, 1962
Perlis	Administration of Muslim Law Enactment, 1963

These measures led to the formulation of various styles of managing Baitulmal. The only similarity, was that all Baitulmal were vested by law under the jurisdiction of a governing religious body, the Majlis Ugama, of each of the Malay states, which was given the power, subject to the approval of the Ruler, to make rules for the

⁶⁸⁹Ahmad Ibrahim, *op. cit.*, pp. 290-297.

administration, collection, and disbursement of all property of the Baitulmal. In addition, the income of every *waqf^c ām* (general waqf) and *nazr* was required to be paid to and form part of the Baitulmal. In some cases, the property and assets also of a general waqf and nazr might be deposited with the Baitulmal.⁶⁹⁰

As a result, though the scope and definition of Baitulmal differed from one state to another, the effect was legally much the same:⁶⁹¹

Malay States	Definition and Scope of Baitulmal
Selangor, Negri Sembilan	Money and property, movable or immovable, which by Muslim law or under the provisions of the Enactment or rules made thereunder accrues or is contributed by any person to it
Perak	Share of the estate of any Muslim dying in the State, comprising both movable and immovable property, as shall fall into residue, such share of the estate of any Muslim domiciled in the State but dying elsewhere as is movable property and falls into residue and such share of the estate of any Muslim as shall be comprised of immovable property situate in the State and fall into residue, as would by Muslim law have become the property of the Ruler as Baitulmal
Kelantan, Trengganu	Any share of the estate of a deceased Muslim which according to Muslim law is due to the Baitulmal shall be paid to the Treasurer of the Baitulmal and shall be credited to him to the Baitulmal. An account called the General Endowment Fund was set up to deposit all property, investments or funds of the Baitulmal
Pahang, Malacca, Penang, Kedah	An account called the General Endowment Fund was set up to deposit all money and property, movable and immovable by which the Muslim law or under the provisions of the Enactment or rules made thereunder accrues or is contributed by any person or payable to the Fund.

⁶⁹⁰ Ahmad Ibrahim, *Islamic Law in Malaya*, (MSRI, Singapore, 1965) pp. 290-297.

⁶⁹¹ Ahmad Ibrahim, *Islamic Law in Malaya*, (MSRI, Singapore, 1965) pp. 290-297.

Johore	Any share of the estate of a deceased Muslim which according to Muslim law is due to the Baitulmal and be paid to the Treasurer of the Baitulmal.
Perlis	An account called the General Endowment Fund was set up to deposit all money collected under the Administration of Estates Enactment, the income of every waqf (including waqf khās), and every nazr ʿām, the property of a person who dies in such a circumstances as to make such property vest or be payable to the Baitulmal and such other proerty as under the provisions of the administration of Muslim Law Enactment

Chapter Five

The Integration System of Taxation

Chapter 5

Integrated System of Taxation in Malaysia

Religious Taxes: Legal Provisions in the Income Tax Ordinance and Act

With the development of centralized state-controlled zakat and fitrah pioneered by Kelantan in 1915, followed by other Malay states until 1957, revenue generated from zakat and fitrah was consumed at local levels limited to the *qariah* of the *mukim* where the collection was exacted. In 1917, the first tax on income, called the War Tax, was introduced in the Straits Settlement to assist Britain in financing the war, despite widespread public representations. In 1920, the income tax was extended to the Federated Malay States.⁶⁹²

Despite the fact that statistics of revenue generated under the War Tax Ordinance from 1917 to 1919 in the Straits Settlements showed a considerable number of Muslims paying tax on their income, the War Tax Ordinances failed to address the issue of “double-taxation”. Though it was evident that most Muslims who had paid income tax were Malay, Indian Muslims and Arab traders living in urban areas, there was no doubt that there was, to some degree, an extra tax burden suffered by these Muslims as it was a known fact that self- disbursement of zakat and fitrah dues was prevalent at that time. However, it may be conceded that at that period, Malay padi associated activities, which had been the target of the initial zakat and fitrah enactments, were liable to religious taxes but were not within the reach of the War Tax Ordinances. For this reason, it is highly probable that the two tax nets did not superimpose one upon the other.⁶⁹³ The

⁶⁹²See Chapter 3 --Direct Taxation, pp. 9-13.

⁶⁹³*ANM/KL, P/HDN 1, 1947, p. 35.* Table shows payments of tax by individual taxpayers by races and corporation in the SS:

Description of Taxpayers	War Tax Assessments (\$)		
	1917	1918	1919

reintroduction of the War Tax Ordinances as a permanent tax mechanism in 1920 to include both the Straits Settlements and the Federated Malay States, however, made no attempt to focus on the dilemma faced by the Muslim community. The two tax nets were still separate entities, leaving the Muslims as the end losers.⁶⁹⁴

As discussed in Chapter 3, the introduction of the War Tax, subject to howls of protest from the business community, had inevitably created massive tax evasion by those potential taxpayers, non-Muslims and Muslims alike, who had enjoyed light taxation ever since the advent of British administration in the Malay Peninsula and Singapore. Furthermore, the imposition of the War Tax Ordinances without regard to the payment of religious taxes paid by Muslim taxpayers had created a group of tax evaders who treated profits as having merely financial implication without any recourse to religious obligation. This group tried not to pay war taxes and at the same time insisted that they would not pay zakat and fitrah whilst those taxpayers recognizing an obligation to both religion and the state would be in dilemma, faced with a double tax burden.⁶⁹⁵

European, American and Eurasian	804007.14	863781.36	1002021.8
Chinese	1214099.11	1417208.28	1434350.88
Malay and Arab	106485.9	97751.15	91965.87
Jew	33239.29	93280.45	96096.84
Indian	148796.76	208525.29	231941.86
Japanese	6294.83	14236.45	15922.02
Others	21441.56	45978	30064.39
Add: Registered Companies	1197374.29	1491683.93	1826083.6
Total Collected (\$)	3531738.88	4160444.91	4728447.26

⁶⁹⁴See Chapter 3--Income Taxation, pp. 13-16.

⁶⁹⁵See Chapter 3. Cf. Zulkornain bin Yusof, *Percukaian Negara Islam--Perbandingan Percukaian Moden Dengan Islam*, (DBP, Kementerian Pendidikan Malaysia, KL, 1994) pp. 46-47.

This inequality continued for 27 years. The turning point towards recognizing the role of zakat and fitrah as a compulsory and divine obligation of Muslims came when the *Income Tax Ordinance, 1947* was enacted on 15th December, 1947. It is not known why this change took place. What is important is that for the first time in the history of secular taxation in Malaya, payment of any obligatory zakat and fitrah made under any written law was treated as a deduction in ascertaining the income of taxpayers, pursuant to section 14(1)(g) of the *Income Tax Ordinance, 1947*.⁶⁹⁶ The deduction, if accompanied by an official receipt issued by the religious authority, was allowed by the Inland Revenue Department (IRD) with effect from Y/A 1948.⁶⁹⁷ However, due to its nature as a deduction under the *Income Tax Ordinance* payment of obligatory zakat and fitrah made in the basis year 1947, it was eligible as a deduction only in the Y/A 1948. Analogically, the payment of zakat and fitrah was not treated as equivalent religious taxation. In this, financially, Muslim taxpayers who were paying income tax had suffered a greater tax burden compared to non-Muslim taxpayers who were also paying income tax on their incomes.⁶⁹⁸ In 1947, a deduction was allowed only to individual taxpayers or approved institutions. However, it was not known as to why the wordings used in the Working Sheet and the Notice of Assessment of Y/A 1948 “*Penolakkan bagi pemberian khairat kepada perbadanan* (deductions for gifts to approved institutions)” appeared to refer to institutions rather than individual taxpayers.⁶⁹⁹

It worth recalling that by the end of 1949, only a few of the Malay states had some form of enactment to regulate and control zakat and fitrah. Zakat and fitrah were

⁶⁹⁶Income Tax Ordinance, 1947 (M.U. Ordinance 48 of 1947) of the States of Malaya, 15th December, 1947, (Attorney-General's Chambers, Kuala Lumpur).

⁶⁹⁷“Y/A” is an acronym for “Year of Assessment”, a term commonly used in the tax community.

⁶⁹⁸*Income Tax Ordinance, 1947*; Cf., also *Staff Handbook* (IRD, Malaysia, 1970) para 1445, p.300. As a general rule of thumb, institutions or organizations, for the purpose of the Act, are defined as a non-profit entities related to religious activities, hospitals, a public or benevolent institutions, educational institutions, public authorities engaged in research, etc. See also Appendix 5.1.1--Notice of Assessment Y/A 1948.

⁶⁹⁹See Appendix 5.1.1--Working Sheet Y/A 1948.

still practiced at local levels limited to *mukims*, though some wealthy Malays, °Arabs and Indian Muslims were known to have paid War Tax under the War Tax Ordinances on their income since 1919.⁷⁰⁰ The ineffectiveness of the Income Tax Ordinance in alleviating the tax burden of Muslims ran through until the 1950's by which time most of the Malay states had formulated enactments governing religious affairs and Malay custom.⁷⁰¹

By early 1963, the *Income Tax Ordinance, 1947* had been repealed and replaced by the *Income Tax Act, 1962* (Act 20 of 1962), followed by the *Income Tax Act, 1967*. By the middle of 1968, the IRD through the Consolidated Comptroller's Ruling Circulars 1948 to 1967 issued a directive, Ruling No. 36, to all its branches pertaining to the allowable deduction on zakat and fitrah. The department cautioned its branches that claims made should be allowed without query in view of the small amounts involved. It was obvious that the ruling was directed to the payment of fitrah which at that time was levied, on the average, to the order of about of \$1 per person. However, by virtue of the definition in the ruling that zakat was the tithe of certain property payable annually in accordance with Muslim law, the department cautioned its branches that the zakat might be a substantial payment and of considerable importance for income tax assessment. At this juncture, it was clear that deductions for payment of zakat, other than fitrah, must be accompanied by an official receipt issued by the respective religious authority. Towards the end of 1967, only seven of the Malay states had gazetted enactments to regulate and control the collection and disbursement of zakat and fitrah. The plight of Muslims bearing too great a tax burden was still not getting proper sympathy from the Federal government, when Muslims in Penang were denied the zakat

⁷⁰⁰See footnote 693 on the statistics of the War Tax assessments from 1917-1919.

⁷⁰¹The first state, after Kelantan, to bring zakat and fitrah under state control was Trengganu, when the Department of Religious Affairs at direct command of the Menteri Besar organized the collection and disbursement of these funds. Kelantan adopted this system in 1915, followed by Pahang in 1922, Perlis in 1930, Johore in 1934 and Kedah in 1936 later triggering a chain reaction to other Malay States until 1957 when Negri Sembilan was the last Malay state to implement some sort of zakat institution. For detailed discussion, see Chapter 4.

and fitrah deductions accrued, due to the fact that Penang and Province Wellesley, by that time, had not formulated its enactment to regulate zakat and fitrah. The religious authorities of the seven states which had, for the purpose of section 6A(3) and (4) of the Act, were specified in the following enactments:⁷⁰²

State	Title of Enactment	Obligatory Dues
Selangor	Administration of Muslim Law Enactment No. 3 of 1952 Supplemented by the Administration of Muslim Law (Fitrah and Zakat) Rules, 1953	Zakat and Fitrah
Trengganu	Administration of Islamic Law Enactment, 1955	Zakat and Fitrah
Kedah	State of Kedah Zakat Enactment No. 4 of 1374 (1955)	Zakat
Pahang	Administration of the Religion of Islamic Enactment, 1956	Zakat and Fitrah
Johore	Zakat and Fitrah Enactment, 1957	Zakat and Fitrah
Negri Sembilan	Negri Sembilan Enactment No. 1/57 published in GN. 325/57	Zakat
Malacca	Administration of Muslim Law Enactment No. 1 of 1959	Zakat and Fitrah

From Y/A 1968, a new concept of deduction was introduced with emphasis on religious taxes in the form of *bayaran agama yang di-wajibkan* (obligatory religious dues) allowed after determination of aggregate income in addition to the existing allowable deduction "Gifts of Money to Government or approved institution".⁷⁰³ In order for zakat payment to be eligible for a rebate, the following conditions must be

⁷⁰²Ruling No. 36 "Zakat and Fitrah", Consolidated Comptroller's Ruling Circulars 1948 to, Kuala Lumpur, July, 1968; Staff Handbook (IRD, Malaysia, 1970) pp. 300-301, containing explanations and instructions relating to the administration of the Income Tax Act, 1967.

⁷⁰³Appendix 5.1.2--Notice of Assessment Y/A 1968.

satisfied:⁷⁰⁴

- i. Payment of zakat must be a compulsory due;
- ii. Zakat and fitrah or other religious dues must be paid in the basis year for that year of assessment, and
- iii. Payment must be accompanied by a receipt issued by religious authority established under approved written laws of Malaysia.

Coincidentally, in early 1968, the issue of Muslim taxpayers having to bear an extra taxation burden (income tax and zakat) had agitated Muslims after a paper entitled *Cukai pendapatan yang dipungut oleh pemerintah tidak boleh melepaskan seseorang itu daripada membayar zakat* (Income tax imposed by the government cannot relieve a person from his duty to pay zakat) presented by the *Iman Masjid Negara* (Imam of the Central Mosque), Haji Ghazali Abdullah, during the two day conference, *Konggres Alim Ulama Yang Pertama, 1968* (First Ulama Congress, 1968). The paper provoked the concern of participants and members of the audience when it disclosed that many Muslims had to pay total tax of about 8% from their income (zakat 2.5% and income tax 6%) and suggested that the Government only impose 6% tax (zakat and income tax). Some even demanded the abolition of income tax on Muslims and some ulama even contended that efforts to attract wealthy non-Muslims to accept Islam were hampered because of the extra tax burden Muslims had to bear.⁷⁰⁵

Nine years later, religious taxes were given some recognition but the method of assessment in the secular tax system did not change. From Y/A 1977, the two

⁷⁰⁴Income Tax Act, 1967; ANM/KL BK/UK 7, Prof Tan Sri Dr Ahmad Ibrahim, "Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas Dalam Perundangan Cukai" in Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia, 28-29 March, 1988, p. 2. Under section 6A(1) of the *Income Tax Act, 1967*, income tax payable for a particular Y/A on income of any individual resident must be rebated for that Y/A as allowed under section (2) and (3) of that Act.

⁷⁰⁵"Cukai pendapatan yang dipungut oleh pemerintah tidak boleh melepaskan seseorang itu daripada membayar zakat" by Haji Ghazali Abdullah (Imam Masjid Negara), a paper presented in *Konggres Alim Ulama' Yang Pertama*, 10th and 11th February, 1968. Cf. "Kelohan dalam sidang--Chukai pendapatan berat; zakat tidak boleh di-elakkan", *BH*, 12/2/68; "Kerajaan digesa dapatkan kuasa kelolakan pungutan zakat", *UMA*, 12/2/68; "Ada-kah adil orang-orang Islam di-kenakan kedua2 chukai", *UMA*, 12/2/68; "Chukai pendapatan tidak dapat lepas seseorang daripada membayar zakat", *UME*, 12/2/68. See Appendix 5.1.3-Working Sheet Y/A 1977.

previously mentioned deductions were combined to become "Gifts of money to the Government or State Government or approved institutions or organizations, and zakat or fitrah evidenced with receipt" after aggregate income was calculated. However, this did not appear to achieve equal distribution of the tax burden between Muslims and non-Muslim taxpayers. Muslim taxpayers still suffered discrimination because payment of religious dues was not, per se, treated as a deduction which was allowed after aggregate income was determined.⁷⁰⁶

During the tabling of the 1977 Budget, the government pledged to accelerate the attainment of the socioeconomic objectives which resulted in the changes of the tax structure to reduce the cost of living, particularly for those in the lower income group. The government believed that it could be achieved through the introduction of rebate.⁷⁰⁷ As a result, the concept of tax rebate⁷⁰⁸ was introduced to individuals resident in Malaysia.

In the following year, as a result of strong representations from Muslims, particularly from various religious bodies who claimed that they had to pay tax twice on the same income in the form of income tax and zakat, the Federal government agreed to extend the application of rebate to the obligatory religious dues.⁷⁰⁹ During the tabling of the Budget of 1978, the government announced a measure to enhance the collection of Islamic religious dues in various states by allowing payment of zakat, fitrah and other compulsory Islamic dues as credits against income tax payable and not as deductions from aggregate income which had been in force for almost thirty years since 1947.⁷¹⁰

⁷⁰⁶Appendix 5.1.4--Notice of Assessment Y/A 1977; Appendix 5.1.5--Notice of Assessment Y/A 1978.

⁷⁰⁷*The Budget 1977, Malaysia*, pp. 6-14.

⁷⁰⁸Appendix 5.2--Working Sheet Y/A 1977 (Tax Rebate to Individual Taxpayer).

⁷⁰⁹Appendix 5.1.5--Notice of Assessment Y/A 1978

⁷¹⁰*The Budget 1978, Malaysia*, pp. 18-19. See Appendix 5.3--Notice of Assessment Y/A 1978 (Tax Rebate for Zakat & Fitrah).

Throughout these thirty years, the Federal authorities had been adamant against change despite the plight of Muslim taxpayers, who had been paying compulsory religious dues. For reasons which are unclear, limited rebates were allowed only to individual taxpayers whereas commercial Muslim-controlled corporate entities were not getting any benefits of the rebate system except as deductions allowed as operating expenditure. The amount of tax rebate allowed could be enumerated as follows:⁷¹¹

- i. \$60 for an individual and \$30 for the first spouse,
- ii. zakat, fitrah or any other Islamic religious dues payment.

It worth noting that despite the new formula introduced by the government to alleviate the tax burden suffered by many Muslim taxpayers, payment of zakat was only allowed in the following basis year, resulting in a double tax burden in the first year of zakat payment. To add salt to the wound, Muslim taxpayers would suffer loss in time-value of money and total loss in the payment of zakat if in the following year the taxpayer's tax liability is a non-liaible (NL) case or tax payable was less than the total rebate. This scenario is best illustrated as follows:

A Muslim taxpayer resident in Kuala Lumpur has a total income of RM20,000 in basis year 1996 and RM 20,000 in basis year 1995. He has one unemployed wife and two children aged 5 and 12. He has fulfilled all conditions for the payment of zakat on his employment income. His zakat and income tax are calculated as follows:

⁷¹¹ *Staff Handbook* (Employment and Non-business Income, IRD, Malaysia, 1987) pp. 343-344.

Zakat tax payable in basis year 1996	Income Tax Y/A 1997
<p>Gross income of 1995: RM 20,000</p> <p>Zakat Tax due in 1996</p> <p style="padding-left: 40px;">= 20,000@2.577%</p> <p style="padding-left: 40px;">= RM515.40</p> <p>Note: Assessment Methods:</p> <p>i. Gross@2.5% = Zakat on employment is deemed as zakat on gold imposed only on Muslims resident in Kuala Lumpur and Penang, OR,</p> <p>ii. Net Basis = Zakat tax calculated on net basis after deductions such as expenditure..</p>	<p>Example I</p> <p>Gross income: RM 20,000</p> <p>Less:</p> <p>Personal Relief 5000</p> <p>Wife Relief 3000</p> <p>EPF@11% 2200</p> <p>Child=800 x 2 = <u>1600</u> <u>11800</u></p> <p>Chargeable Income 8200</p> <p>Income Tax:</p> <p style="padding-left: 40px;">First 5000 = 50.00</p> <p style="padding-left: 40px;">Next 3200@4%= <u>128.00</u> <u>178.00</u></p> <p>Less: (Rebate)</p> <p>Individual 110.00</p> <p>Wife 60.00</p> <p>Religious Dues <u>515.40</u> <u>685.40</u></p> <p>Tax Payable NL</p> <p>Example II: Taxpayer did not pay zakat</p> <p>Income Tax = 178.00</p> <p>Less: (Rebate)</p> <p>Self 110.00</p> <p>Wife <u>60.00</u> <u>170.00</u></p> <p>Tax Payable 8.00 (NL)</p> <p>* Less than RM25.00 deemed NL</p>

In the above illustration, a Muslim taxpayer appears to be not liable to income tax if he doesn't pay zakat and hence has committed a religious offence and sin. If he pays zakat on his employment income which would clear him of the divine obligation, he tends to bear a religious tax liability of RM515.40.

The main feature of the concept of rebate in relation to the treatment of zakat taxes in the *Income Tax Act, 1967*, were undoubtedly questionable. Firstly, the payment of zakat, fitrah or any religious dues must be compulsory in nature. However, this condition was difficult to monitor since it was known that some Muslim taxpayers could pay any amount of arrears on their religious dues as a result of a feeling of sinful for not paying zakat in the past (even though they had been financially able to pay) or voluntarily willing to pay more religious dues. Both cases were known to be accepted by any religious authority. Secondly, if the zakat payment exceeded the income tax

charged, any excess was not refunded or allowed to be carried forward to the next basis year.⁷¹² Thirdly, the allowable rebate was limited to individuals only, not to business entities. Fourthly, section 6A(4) stipulates that the total amount of rebate given under section 6A(3) should not exceed the amount of tax payable for that year of assessment. Any excess was not allowed to be carried forward for the purpose of rebate in a subsequent year of assessment.⁷¹³

In effect, the conditions stipulated in section 6A of the Act were more damaging than they were meant to be. Firstly, in the first year of payment of zakat, a Muslim taxpayer had to pay income tax and also zakat, where payment of zakat was not given any rebate until the following basis year. Secondly, the taxpayer would suffer financial loss if the payment of zakat exceeded his income tax liability. Thirdly, and most damaging, was that IRD had frequently used the receipt of zakat payment to trace a taxpayer's other sources of undeclared income which had resulted in substantial understatement of income and a 100% omission penalty.⁷¹⁴

⁷¹²Staff Handbook (Employment and Non-business Income, IRD, Malaysia, 1987) p. 344.

⁷¹³Laws of Malaysia- Income Tax Act 1967 (The Commissioner of Law Revision, Malaysia, 1993) p. 28. Section 6A(3), "A rebate shall be granted for a year of assessment for any zakat, fitrah or any other Islamic religious dues payment of which is obligatory and which are paid in the basis year for that year of assessment to, and evidenced by a receipt issued by, an appropriate religious authority established under written law". Section 6A(4), "Where the total amount of the rebate under subsections (2) and (3) exceeds the income tax charged (before any such rebate) for any year of assessment, the excess shall not be paid to the individual or available as a credit to set off his tax liability for that year of assessment or any subsequent year".

⁷¹⁴*Seminar Zakat dan Cukai Pendapatan*, 5-6 November, 1988, Universiti Sains Malaysia, Penang. One of the papers presented was "Antara Zakat dan Cukai Pendapatan--Satu Analisis Penyelarasan" by Haji Abd. Hamid Hj. Mohd. Hassan, Branch Head, IRD Penang; researcher's personal experience in the Assessment Branch Malacca (1984-1987) who had used this method of using zakat receipt to track down a taxpayer's omission on his other undeclared incomes.

Federalization of Zakat Collection

Background

As a result of the bureaucratization in the *Majlis Agama Islam Negeri* (State Islamic Affairs Council) and their administrative arms the *Jabatan Ugama Islam* (Department of Islamic Affairs) based on Western precedents and established by a variety of statutory enactments and administrative regulations and practices during the formative period of the 1950's and 1960's, the decentralization of religious affairs was cast in a rigid mold of state government, headed by the respective Sultans. It was through the power vested in the Sultan as head of religion that the *Majlis Agama Islam Negeri* and the *Jabatan Ugama Islam* operated.⁷¹⁵ The system had to grapple with at least three major recurring problems in relation to zakat affairs:

1. Dissimilar and haphazard forms of zakat and fitrah collection systems in the various states,
2. Non-productive use of excess revenues after disbursement to the poor and needy, and
3. Payment of income tax used as an excuse for non-compliance with zakat rules.⁷¹⁶

But a rift certainly developed between the law and its applications, and the varied and changing demands of contemporary Muslims, and where the state religious authorities were unable to make the necessary accommodations, religious tax disparity continued to prevail in practice with padi farmers as the end losers. From this state of uncertainty, a new mounting wave of awareness of untapped potential vast financial resources of Muslims was propagated through the system, demanding further reform of the ailing system. It should be said that the wave front of this revolution appears to come to a crest in 1964 when a resolution was passed in the Conference of the Malaysian Religious Teachers and Students for the establishment of a secretariat to study and formulate

⁷¹⁵"Persidangan alim ulama kita", editor's column, *BH*, 12/2/68.

⁷¹⁶"Tithes for economic progress", *NST*, 8/6/68.

centralized corporate collection and disbursement agencies.⁷¹⁷

The advent of 1968 saw the long-awaited reform appear imminent, when a two-day conference called for the implementation action of a resolution passed in the *Konggres ekonomi Bumiputra yang Pertama, 1965* (First Bumiputra Economic Congress, 1965).⁷¹⁸ In the light of what has already been discussed in Chapter 4 concerning the structural tensions inherent in the division of religious authority between ulama in and outside the *Majlis Agama Islam Negeri*, this increase in awareness and renewed insistence on change naturally influenced the course of reform and began to alter classical perceptions of current zakat, resulting in the *Konggres Alim Ulama Yang Pertama, 1968* (First Ulama Congress, 1968) attended by about 500 ulama, and held in Kuala Lumpur in February 1968. Its main objective was to draw up recommendations for the utilization for Muslim development of the zakat and fitrah collections.⁷¹⁹

The conference, given much coverage by the Press as much as a month before its due date, succeeded in stirring wide responses from the public in general and mixed reactions from various organizations, including from the opposition party, *Parti Islam Se Malaysia (PAS)*. PAS contended that co-operation between MAIN and *Jabatan Ugama Islam* across state boundaries would not be successful no matter how many conferences were organized, due to the fact that the papers presented at the conference

⁷¹⁷"Persidangan alim ulama kita", editor's column, *BH*, 12/2/68.

⁷¹⁸"Semua jenis zakat fitrah dan harta-harta wakaf boleh dijadikan modal untuk pembangunan ekonomi umat Islam", *Merdeka*, Vol. II, No. 5, 15/2/68. The resolution passed was that the Federal Government must establish a meeting consisting of ulama to discuss Islamic laws pertaining to the consolidation of collection of zakat, fitrah and Baitulmal, and the procedures governing them with the objective to maximize its economic potentials.

⁷¹⁹*Rumusan Konggres Alim Ulama' Yang Pertama*, 10th and 11th February, 1968. Seven extremely productive papers were presented, amongst them, "Menyamakan peraturan menungut zakat fitrah disemua negeri-negeri", "Penggunaan wang Baitulmal", "Mengadakan tabung kumpulan wang zakat peringkat persekutuan (Pusat) dan cara-cara menggunakan wang itu", "Penggunaan harta waqf dan wang zakat bagi pembangunan ekonomi orang-orang Islam", "Cukai pendapatan yang dipungut oleh pemerintah tidak boleh melepaskan seseorang itu daripada membayar zakat", Hukum memindahkan pungutan zakat dari satu tempat ketempat lain". Cf. "Religious leaders to hold talks on tithes", *NST*, 11/1/68.

were without substance, researched and written by ulama who were illiterate in modern economic precepts, even though the discussions on the papers were chaired by intellectuals and academicians such as Royal Professor Unku Aziz, Tan Sri Raja Mohar, Dr. Ungku Omar, Professor Syed Najib al-Attas and others.⁷²⁰

Revenues generated from zakat and fitrah were in fact very disappointing. Statistics of zakat and fitrah collected from an estimated 5 million Muslims compiled for a meeting of the Heads of Departments of Religious Affairs on 15th January, 1968, at which all religious authorities were reported satisfied with performance, had only unearthed defects in the system. A number of Muslims did not pay their dues to Departments of Religious Affairs and appointed amils, and a majority did not pay zakat and fitrah at all. It was crystal clear at this point that the zakat system could not yet be a pillar to boost the economy of Muslims. The solution suggested was that a federal body acting as a trust in administering zakat on behalf of the states be established but without affecting the power and privilege of the rulers as head of state and religion.⁷²¹ In the result it was proposed that an independent corporation be established by the *Majlis Amanah Rakyat (MARA)*, run by a Board and directors to be drawn from various religious councils and departments. MARA would also provide financial and technical advice.⁷²²

Based on the thoroughness of the seven papers presented and the resolutions passed at the *Konggres Alim Ulama' Yang Pertama*, there was no doubt that the urge for

⁷²⁰"Sidang Ulama ta' berfaedah dan sia-sia--Hasan Adli", *BH*, 6/2/68. PAS was also conservative in its views when it argued that revenues generated from zakat and fitrah could not be legally be invested to maximize general economic potentials. Cf. "Semua jenis zakat fitrah dan harta-harta wakaf boleh dijadikan modal untuk pembangunan ekonomi umat Islam", *Merdeka*, Vol. II, No. 5, 15/2/68.

⁷²¹"Menyamakan peraturan menungut zakat fitrah disemua negeri-negeri" by Haji Othman Abdullah, *Konggres Alim Ulama' Yang Pertama*, 1968. In 1967, \$3,521,700 was collected from zakat and fitrah. Basing on the estimated 5 millions Muslims paying on the average \$1.00 per head, collection from fitrah alone would have generated \$5 million annually. This might imply that about 1.5 millions Muslims were below the poverty line.

⁷²²"Tithes for economic progress", *NST*, 8/6/68.

a radical federalized reformation would have remained in hibernation long before 1968 until it was triggered and hatched out by the *Konggres Ekonomi Bumiputra Yang Pertama, 1965*. After a series of deliberations and presentation of seven papers by the contemporary ulama, the resolutions passed, enumerated as follows, had shown that the Congress was crystal clear about the needed direction of the reform:⁷²³

1. The base of taxation needed to be extended to all economic activities and a Committee consisting of ulama, economists and law experts should be established to formulate the basis of assessment and the niṣāb,⁷²⁴
2. All laws pertaining to the administration of zakat and fitrah in all states need to be made uniform,
3. Though it was unanimously agreed that revenues from waqf, zakat and fitrah be invested appropriately to maximize their economic potential, some of the participants contended that only general waqf, not including zakat, could be invested.

At the climax of the meeting, though the Congress agreed in principle that revenues collected from zakat, fitrah, waqf and Baitulmal could be invested to maximize economic returns, the Congress could not agree to a fatwa by an expert in Islamic law Dato' Dr. Abdul Jalil Hassan that revenues from zakat and fitrah could be distributed across the state boundaries, even though a majority of the participants agreed to the idea of a federalized Zakat Fund.⁷²⁵ In as much as the participants of the conference knew

⁷²³*Rumusan Konggres Alim Ulama' Yang Pertama*, 10th and 11th February, 1968; "Alim ulama gegar pendapat usang--Sidang zakat dan fitrah membawa suasana baru kritis dan mujtahid", *BH*, 16/2/68.

⁷²⁴"Jenis-jenis perniagaan dan perusahaan yang wajib dikenakan zakat" by Haji Salleh Othman, *Konggres Alim Ulama' Yang Pertama*, 10th and 11th February, 1968.

⁷²⁵"Hukum memindahkan pungutan zakat dari satu tempat ke tempat lain" by Dato' Dr. Abdul Jalil Hassan, *Konggres Alim Ulama' Yang Pertama*, 10th and 11th February, 1968; *Rumusan Konggres Alim Ulama' Yang Pertama*, 10th and 11th February, 1968. Though Muslim jurists were divided in this issues, Dato' Dr. Abdul Jalil Hassan had found that the conflicting issues were not totally fatal to the proposal when he was able to summarize that it was *harus* (allowable) to transfer zakat and fitrah funds across the state's boundary in the maṣlahah (interest) of the ummah but only portion of the fund pertaining slaves, fisabilillah and excess revenues from the disbursement of mu'allaf, gharim and ibnusabil. Cf. "Alim ulama tentang ura-ura menubuhkan sharikat kerjasama dengan wang zakat", *BH*, 31/1/68; "Usaha memusatkan pungutan zakat fitrah", *Berita Minggu*, 4/2/68.

that “cross-boundary” disbursement was a fundamental issue for a meaningful federalized corporate zakat mechanism, the disagreement appears to point to a more fundamental question: consent of the Council of Rulers.

Although the Conference was a success in its own right, without the fatwa for the cross-boundary disbursement, the proposed federalized Zakat Fund would not be able to function as originally intended: to alleviate poverty and economic disparity in poorer states. After the Conference, one crucial question remained unanswered: would the *Majlis Raja-raja Melayu* (Council of Rulers) from which the *MAIN* and *Jabatan Ugama Islam* derived their executive and administrative powers, consent to surrender their last defence of *kedaulatan* (sovereignty) to the Federal Government?⁷²⁶ It would be natural for the Council of Rulers be extremely cautious on this issue, given the long history of erosion of sultanate powers since the inception of colonial rule.⁷²⁷

In 1974, Mahmood Zuhdi Abdul Majid, through the association of ex-students of Nilam Puri, submitted a memorandum for reform of zakat collection to the Minister in the PM’s Department, Datuk Asri Muda, who personally had shown interest in the Congress resolutions. The initiative was then given further impetus when the Federal government’s *Pusat Islam*⁷²⁸ sought to explore the possibility of extending the scope of taxation.⁷²⁹

By 1975, despite aggressive bureaucratization of zakat machinery affecting, the administration of zakat and fitrah in most states had failed to solve the inefficiencies

⁷²⁶“Ulama ragu-ragu--Mungkin Majlis Raja-raja tolak keputusan”, *UMA*, 12/2/68; Editorial column, “Persidangan alim ulama kita”, *BH*, 12/2/68.

⁷²⁷For a detailed account of the Malay Sultanate tax system, see Chapter 2.

⁷²⁸*Pusat Islam* is a government agency in the Prime Minister Department, responsible for all matters related to Islam at federal level and also to liaise with the religious authorities at state level.

⁷²⁹“Interviews with Prof. Dr. Mahmood Zuhdi Abdul Majid, Director, Islamic Academy, University of Malaya,” *BH*, 9/2/96.

resulting in disappointingly poor responses and collection of zakat and fitrah. Statistics showed that the reforms begun in the 1950's had not been able to meet their prime objectives. Statements of revenue generated in 1975 proved this:

State/Type of Zakat	Fitrah	Zakat Padi	Property	Business
Trengganu	324830	72421	19001	0
Kelantan	720000	205000	N.A.	N.A.
Perak	944416	182215	N.A.	N.A.
Penang	331442	**	**	**
Perlis	130000	400000	N.A.	N.A.
Selangor	669900	81308	23845	N.A.
Wilayah Persekutuan	165916	N.A.	14718	511
Negri Sembilan	357450	10310	14310	N.A.
Malacca	330419	8028	5352	-
Johore	1344694	2491	44885	16883
Sabah	86818	N.A.	1272	N.A.
Sarawak	140567	N.A.	N.A.	N.A.

Source: Data complied from "Collection of Working Papers presented during "Perjumpaan Pegawai-pegawai Zakat/Baitulmal, Jabatan Ugama Islam Negeri-negeri, 1977/1397. [Note: N.A. denotes data is not available; "***" denotes that this particular zakat was not being collected].⁷³⁰

Though the revenue generated from voluntary payments of zakat on property, and business was relatively small, the statistics show that a degree of awareness had apparently started to grip the Muslim community in the more developed states. In addition, the poor collection on these zakat was the result of various states for not enforcing its collection. For instance, in Penang, only fitrah was collected.

⁷³⁰In Selangor, the figure \$23,845 represented revenue generated from property and business. In Negri Sembilan, the figure \$14,310 represented revenue generated from padi, property and business. See "Collection of Working Papers presented during "Perjumpaan Pegawai-pegawai Zakat/Baitul Māl, Jabatan Ugama Islam Negeri-negeri, 1977/1397, organised jointly by the Majlis Ugama Islam Wilayah Persekutuan, PM's Department, Kuala Lumpur, p. 5.

By 1977, penalty provisions targeted at zakat and fitrah defaulters were obviously not standardized across state boundaries. In addition, penalty for failure to pay assessed zakat and fitrah was also not standardized. For instance, in Sarawak failure to pay zakat, the penalty is not more than \$200 and not more than \$25 for fitrah. Furthermore, the definitions of “misappropriation of zakat properties, inciting or persuading any person professing the Muslim religion to refrain from paying zakat or fitrah” (*penyalahan penggunaan harta zakat dan fitrah, melarang dan menghasut orang dari membuat pungutan atau membayar zakat dan fitrah*) were still vague and subject to various legal interpretations and practices.⁷³¹

The problems of amils was far from over. Apart from their frequent failure to surrender the collection within the stipulated time set by the Majlis, there were rare cases of embezzlement of the funds. Provisional assessments and censuses that should have been carried out by amils were hampered by fear of the reaction of the local people. These problems were exacerbated by the amils being influenced by opinions and fatwa given by the local religious teachers and ulama without regard to the official fatwas issued by the Majlis or Department of Religious Affairs. As discussed in Chapter 4, cases where the payers disbursed their zakat and fitrah dues themselves still prevailed and the appointed amils naturally refused to report such cases to the Majlis so that legal action could be instituted against the offenders. Furthermore, in Sarawak, though paras 4(16) to 4(19) of its Enactment made legal provisions for suing zakat defaulters, by

⁷³¹*Ibid.*, p.4. See also above, Chapter 4, p. 56.

As an example, the table below shows some variations in penalty imposition in some of the Malay states:

State	Penalty for contravening Zakat dan Fitrah Rules
Johore	not more than \$10
Selangor and Wilayah Persekutuan	not more than \$100 or jail term of not more than 7 days
Trengganu	not more than \$100 or jail term of not more than 7 days or both
Kelantan	not more than \$300 or jail term of not more than one month

1977, there was still no Shari'ah Court in which this could be done. In Kelantan, certain categories (asnaf) were allowed to be disbursed to by the payers themselves, and it was recorded that in some cases the disbursement of zakat padi had been made to ineligible beneficiaries. Similarly, in the Federal Territories, prior to 1974, the asnaf category *Fisabilillah* was used by some amils to pay the office bearers of mosques (*pegawai-pegawai masjid*). However, with effect from 1974, the disbursement to *Fisabilillah* was administered directly by the Department of Religious Affairs and disbursed in accordance with the definition and interpretation of the term. Until 1977, this new system was frequently subject to abuse (*di ungkit-ungkit*) from certain quarters of the community for no other logical reason than to protect their source of steady income; previous beneficiaries were forced to receive smaller amounts from that privilege.⁷³²

As discussed in Chapter 4, in many of the states, the development of the laws governing religious matters under the generic name *Administration of Muslim Law Enactment*, was the aftermath of the adoption of an established system by other states. For instance in Perak, under the *Administration of Muslim Law Enactment, 1965*, the *Majlis Ugama Islam* was established as a corporate body which "may sue and be sued". In addition, for the purpose of creating a pro-active Majlis, para 10 of the Enactment stipulates that it could be involved in economic activities such as land and housing development, business ventures etc. Selangor and Johore had the same definitions of the Majlis. Under section 4(1) of the *Selangor Administration of Islamic Law Enactment, 1989*, and the *Johore Administration of Islamic Law Enactment, 1978 (No. 14 of 1978)*, the *Majlis Ugama Islam Selangor* and the *Council of the Religion of Islam, Johore* were established as corporate bodies. Both bodies may sue and be sued for the purposes of this enactment, may enter into contracts and may require, purchase, take, hold and enjoy movable and immovable property of every description and to convey, assign, surrender, yield-up, charge, mortgage, demise, re-assign, transfer and otherwise dispose of or deal with any movable or immovable property or any interest therein

⁷³²*Ibid.*, pp. 7-9. See also Chapter 4

vested in the Majlis on such terms as the Majlis may deem it".⁷³³ On paper, the wide discretionary powers conferred on the Majlis with the ability to invest, in any manner deemed fit, the huge accumulated excess revenues and properties deposited in the Consolidated Fund without any incumbrance attached to them, appeared to give them unlimited opportunities to develop and expand their resources in such a way as to create an efficient social security system. However, probably due to lack of expertise in the secular tax system, compounded by virtually non-existent professionals in the administrative machinery to conduct proper investment planning, purchases of land for development were given no exemptions from the hefty stamp duties imposed by the IRD, resulting in project developments becoming economically non-viable.⁷³⁴

In May, 1977, the first seminar of its kind in Malaysia, attended by all the Zakat and Baitulmal officers representing all Departments of Religious Affairs except those of Kedah and Pahang, was organized by the *Pusat Islam* of the PM's Department, with the objective of discussing the possibility of formulating ways to administer zakat and Baitulmal pro-actively and efficiently. This seminar, at which three papers *Zakat dan fungsi-fungsinya*, *Pentadbiran Baitulmal di Malaysia*, and *Pentadbiran Zakat di Malaysia* looked set to pave the way for reform of the ailing zakat and Baitulmal administration and machinery. After three days of deliberations and discussions, various resolutions were passed to the following effects:⁷³⁵

1. The MAIN of all states should give preference to the destitute and the poor in the disbursement of zakat and fitrah, within the provisions allowed by Islamic law.

In addition, the disbursement of fitrah should be made before the celebration of

⁷³³*Selangor Administration of Islamic Law Enactment, 1989 and Islamic Family Law Enactment, 1984* pp. 4-5; *Johore Administration of Islamic Law Enactment, 1978 (No. 14 of 1978)* pp. 3-4.

⁷³⁴For a detailed discussion on Stamp Duties, see Chapter 2-Indirect Taxation. "Collection of Working Papers presented during "Perjumpaan Pegawai-pegawai Zakat/Baitul Mal, Jabatan Ugama Islam Negeri-negeri, 1977/1397", organised jointly by the Majlis Ugama Islam Wilayah Persekutuan and the PM's Department, Kuala Lumpur, pp. 8-9.

⁷³⁵*Ibid.*, pp. 44-47.

the Aidil-Fitri.⁷³⁶

2. Government controlled mass-media with the cooperation of respective Majlis and Departments of Religious Affairs should be involved in the dissemination of information and, campaign about the significance and divine obligation for Muslim of zakat and fitrah.
3. The Majlis and Departments of Religious Affairs should enforce the provisions vested in the Enactments and Rules against those who failed to comply.
4. The Majlis and Departments of Religious Affairs should provide enough staff and officers, and also employ professionals in law, evaluation and management, to administer the *Zakat and Baitulmal* machinery efficiently, and to provide management courses for officers with the cooperation of the Institute of Public Administration Malaysia (INTAN). In addition, the staff and officers of the Majlis and Departments of Religious Affairs should be considered as government employees.⁷³⁷
5. In order to prevent confusion which would eventually result in a poor response, the nisab on zakat padi should be standardised in all the states.⁷³⁸ In addition, the

⁷³⁶Rather than distributing directly in cash to the destitute and the poor which would create a "subsidy mentality syndrome", there were attempts by some states to invest the rightful allocations of the destitute and the poor in creating a capital base or as an employment base which it was thought would maximise resources. However, these efforts were received with howls of protest from the conservatives. See "Zakat: Tidak Banyak Golongan Korporat Menyumbang", interviews with the General Manager, PPZWP, *Al-Islam*, October, 1996, p. 28.

⁷³⁷By 1977, in some states such as Johore, salaries of staff and officers involved in the administration of zakat and fitrah were paid out of the state Budget derived from secular revenues, whilst in others such as Malacca, they were paid out of the revenue generated from the consolidated Zakat and Fitrah Fund. Compared to the status of government employees, the morale of the staff and officers who were paid from the consolidated Zakat and Fitrah Fund, were low. Their salaries, much lower than the salary scale set by the Federal and state governments, were determined by the financial liquidity and viability of the Fund.

⁷³⁸For instance, Perlis set its nisab padi as 480 gantangs, Kelantan and Trengganu at 375, Johore at 358 ½, and Selangor at 363. This was also true in the case of fitrah despite the fact that rice was a controlled-item, meaning that the price of one kilogram of rice was the same any where in Malaysia. Until the middle of 1986, each state determined its own rate. For comparison, fitrah in Selangor was \$2.30 per person, others between \$2.20 to \$2.40. See "Bayaran fitrah yang berbeza", *UMA*, 23/5/86.

penalty provisions should also be standardized.⁷³⁹

6. It was suggested the officers of the zakat and Baitulmal be given powers at par with Federal Investigation Bureau (*Biro Siasatan Negara*) officers to investigate assets of Muslims in financial institutions and elsewhere, and be empowered to arrest to those who contravened the Zakat and Fitrah Rules.
7. The scope of taxation should be extended and enforced pursuant to the provisions in the Enactments.
8. In an effort to increase revenue from zakat, it was suggested that the Majlis and Departments of Religious Affairs should find ways to levy savings of Muslims in pension funds such as the EPF (Employees Provident Fund), and LUTH (Pilgrims' Fund Board).
9. The Majlis should invoke legal attempts to block remittances of zakat and fitrah to the country of origin such as India and Pakistan made by Muslim residents in Malaysia.⁷⁴⁰
10. Payment of zakat and fitrah should be set off against the tax payable under the *Income Tax Act, 1967*, and not treated as a rebate.
11. In some states, the rights of the destitute and poor were being invested before being disbursed to them. The Fatwa Committee of all states should issue fatwas on the postponement of disbursement to the destitute and the poor.
12. It was also suggested that the Majlis of all states should obtain fatwas from their Muftis pertaining to the issue of whether excess revenue from zakat and fitrah after disbursement to all asnaf could be deposited into the Baitulmal, so that it could be invested in the best interest (*maṣlahah*) of the ummah.
13. It was also suggested that the MAIN be an institution that could provide community services to Muslims in accordance with the Islamic law, and not

⁷³⁹See Chapter 4.

⁷⁴⁰In Selangor and the Federal Territories and other states with many non-citizen Muslims, the decrease of fitrah collected was due to the fact that in the case of some of these people, such as Indonesian Muslims and Indian Muslims, fitrah dues were paid to the qariah in their home country when they went back to their country of origin to celebrate the Eid. As a result, the census made before the Eid which included these foreign Muslims would eventually be wrong.

merely be known in a limited capacity as a body to collect zakat and fitrah and Baitulmal. In its extended functions, the Majlis should also establish a financial institution, such as a bank or finance company, in each state that would operate in accordance with the Islamic law.

14. The Federal Government should ratify the position of the Islamic Economic Development Foundation (*Yayasan Pembangunan Ekonomi Islam Malaysia (YPEIM)*) so that it could share in the aspiration of alleviating poverty and bettering the economy of Muslims. It was suggested that the Religious Division of the PM's Department should mediate this matter between the MAIN to meet with the Board of the Foundation. In addition, it was suggested that the Federal Government should set up an Advisory Body, consisting of economists together with dedicated and pro-active ulama, that would be responsible for counseling services on certain economic planning matters submitted by any state's Islamic Economic Corporation.
15. The state Governments or any related agencies should give priority to the Baitulmal in cases involving lands designated to Baitulmal.

Despite the thoroughness of the resolutions passed at the seminar by agents of the machinery itself, many of the resolutions remained for some time theoretical fantasies. Subsequently, in an attempt to provide a more structured form of zakat institution, the Religious Division of the PM's Department decided to translate the Enactment and Rules of Kuwait's Department of Zakat into Malay, published seven years later, in August, 1984.⁷⁴¹

⁷⁴¹The General Rules governing the administration of zakat was made pursuant to the decision of the Minister of Waqf and Religious Affairs No. 3 of 1973. The Department of Zakat Kuwait, an administrative government machinery and established pursuant to the Act No. 5 of 1982 (Establishment of Department of Zakat), was responsible for the collection and disbursement of zakat. The department is under the auspices of the Minister of Waqf and Religious Affairs of Kuwait. In addition, there is another body called the Zakat Foundation, chaired by the Minister of Waqf and Religious Affairs, whose members are representative from the Ministry of Waqf and Religious Affairs, representative from the Ministry of Labour and Community Affairs (Hal Ehwal Masyarakat), Director General of the Community Insurance (Insuran Kemasyarakatan), Managing Director of the Sultan Palace's Affairs, and six ordinary members who are not government employees. See Rules and Establishment of Department of Zakat, Kuwait, 21/5/83, Malay translation by Religious Division, PM's Department, Kuala Lumpur.

Despite the efforts made by the Federal government to federalize the administration of zakat and fitrah, Islamic matters remained the domain of the state governments until the late 1970's. At this juncture, it was thought that if the administration of religious affairs were more pro-active and efficient, a more realistic amount of revenue would be generated to reflect the true economic strength of the Muslims. With the advent of the 1980's, Muslims in Malaysia, as a result of successive newspaper articles and zakat seminars held nationally and internationally, showed a clear tendency to pressure the government to raise the status of Islam as the official religion and to implement Islamic principles in this field. The new wave of expectations had resulted in the creation of Federal religious schools administered and assisted by the Ministry of Education with financial help from the Federal Government. In the area of finance and banking, Islamic banking through Bank Islam was introduced in 1983. The system was then adopted by various commercial banks while Islamic insurance became a reality when the Syarikat Takaful Sdn Bhd started operation in early 80's, and the Pilgrim Fund Board as a commercial company dealing with Muslims going for pilgrimage, had been the forerunner in the process of Islamic assimilation in Malaysia.

The IRD's Role in the Federalization of Zakat Administration

By the middle of 1985, the Baitulmal of the Federal Territory divulged that they were having acute problems with the procedures of zakat assessment, particularly in the assessment of business zakat and contemplating a national zakat seminar to address these issues. The problems were compounded by a lack of experts in modern accounting and management, as well as experts in the assessment procedures of business zakat according to Islamic law. By this time, the IRD's direct involvement in zakat was imminent, for the plight of Muslim wholly-owned companies, willing to pay business zakat but liable also to income tax, was emphasized as one of the major obstacles to developing an understanding of business zakat. In the final analysis, rather than being exposed to the possibility of being investigated and sued by the IRD and subjected to hefty fines, such companies would rather pay income tax than business zakat.⁷⁴² Though the *Majlis Agama Islam of the Federal Territory* (MAIWP) was facing the same administrative mess, its revenues were the largest of all the states. By 1985, its investments, though not legally provided for in its Enactment at that time, had spread to a variety of economic activities.⁷⁴³

It was true that the IRD had posted queries to the Baitulmal WP whenever an individual taxpayer claimed a rebate for a substantial payment of zakat, resulting in considerable volume of work for the Baitulmal to reply. The Baitulmal WP, annoyed

⁷⁴²"Bank Islam bayar zakat \$435,442", *UME*, 12/6/85; "Zakat: Baitulmal cari penyelesaian--ketiadaan pakar masalah utama", *BH*, 25/9/85. Bank Islam, after consultation with the Majlis Penguasaan Shari'ah, paid business zakat totalling \$435,422 to the respective Baitulmal/Pejabat Zakat, on behalf of its depositors on 20th Ramadhan that year. In addition, its subsidiary company, Syarikat Takaful Berhad in which Bank Islam had a 51% stake, in due course would also pay business zakat.

⁷⁴³"Baitulmal berjaya laksana segala urusan kewangan berdasar undang-undang Islam", *UMA*, 26/2/85. Besides performing its basic functions as a social obligation to the destitute, the poor, the disabled, and financing the operation of old folks homes, the Baitulmal corporate construction arm, Baitulmal Wilayah Sdn Bhd, had been active in building properties for rental to poor businessmen whilst at the same time securing continuous rental revenue to the Fund. In the medical profession, Pusat Rawatan Islam, another corporate subsidiary of Baitulmal, had been the forerunner of an Islamic based private hospital in Malaysia. Another subsidiary, the Baitulmal Kancil, had been active in food manufacturing. Though the operation of the latter was not generating much profit, the Baitulmal contended that it operated under the concept of *fardu kifayah*.

by the IRD probe, contended that the extra burden would be reduced and even might be eliminated if the IRD had personnel expert in the working of an Islamic zakat system.⁷⁴⁴

Early in 1986, administrative inefficiencies and lack of cognizance among Muslims that they must pay their zakat dues were subjected to the spotlight again by the mass media and attracted the attention of politicians. In January, the Minister of Agriculture, Anwar Ibrahim, suggested that it was time to radically reform the system of zakat. It was thought unreasonable to impose zakat padi on poor farmers who were earning on the average \$250 per month whilst \$180 of this income were derived from the government's subsidy schemes. Conscientious farmers, in a dilemma, were voluntarily paying the zakat padi fearing that if not they would be labeled as sinners (*berdosa*) and disbelievers (*menentang hukum agama*).⁷⁴⁵

In 1985, it was estimated that 327,067 Muslims in the Federal Territory had in the previous year paid a total of \$3.5 million in zakat fitrah, property zakat and business zakat whilst over the same period, \$2.6 million in various forms of zakat was collected from 722,405 Muslims in Selangor. It was estimated that \$7 million could have been collected in the two territories if the zakat laws had been strictly enforced. Much more could have been collected if every state had efficient zakat machinery. Despite the laws and regulations governing zakat and fitrah, the authorities apparently rely largely on the conscience of the faithful. However, it was contended that the main problem was attributable to the unawareness of Muslims, which implied that religious teachers and officials had not been effective in explaining the role of zakat in Islam.⁷⁴⁶

⁷⁴⁴"Zakat: Baitulmal cari penyelesaian--ketiadaan pakar masalah utama", *BH*, 25/9/85.

⁷⁴⁵Press Conference of Anwar Ibrahim, "Anwar syor perbetul kaedah bayar zakat golongan rendah", *UMA*, 24/1/86. It worth noting that at this time the political crisis between PAS and UMNO was at its peak. Some PAS leaders had branded UMNO members as "apostates". Anwar Ibrahim contended that it served no purpose to try to promulgate programmes of Islamic awareness while the zakat system was not efficiently administered.

⁷⁴⁶"Millions of ringgit in zakat go uncollected", *NST*, 7/5/86.

Despite mounting administrative problems faced by the Majlis Ugama Islam and the Department of Religious Affairs in almost all the states, the advent of the 1980's was marked by the tendency of the MAIN and Department of Religious Affairs, particularly in the Federal Territory and Kedah, to venture into new territory; creating a new tax base through the imposition of zakat on employment income, which was naturally easier to regulate and control. In fact this is the result of an IRD's initiative pioneered through the first zakat seminar organized jointly with the Baitulmal WP and the *Persatuan Ulama Malaysia* (Malaysian Ulama Association) held on 5th May, 1986 in Kuala Lumpur⁷⁴⁷ that had provided the main impetus and energy in instigating much attention of the mass media, Muslims in general and the Federal Government, in particular, for the view that zakat on employment income would be a feasible alternative, at the same time functioning as a "double-barreled" scheme. It was contemplated as easy to regulate and administer, and at the same able to camouflage temporarily the old nagging administrative problems. There was a general consensus at this time that the IRD's direct participation in zakat administration would result in the tax being collected efficiently and becoming a significant source of revenue for the development of Muslims in general. It was realized that by this time, the IRD's image as a secular tax mechanism had started to change and had the potential for reforming the zakat system.

The IRD's ploy to trigger a chain reaction in spurring the awareness that the collection and disbursement of zakat and fitrah could be developed at par with the effectiveness of the IRD's tax collection mechanism and operate in tandem with its daily operation materialized when the resolutions passed and the papers presented in the first

⁷⁴⁷"Seminar Zakat dan Cukai Pendapatan di Malaysia" held at Auditorium of Asia Pacific Development Centre (APDC), KL, 5/5/86. Two extremely productive papers were presented in the seminar. All with the emphasis on the relation between zakat and the income tax. The first paper presented by Dr Abd. Rashid Hj Dail, an academician from UKM, with the title "Zakat dan Cukai Pendapatan mengikut kacamata Islam" elaborates on the role of zakat in the context of financial resources for an Islamic state and also the theory governing the scope of zakat on employment. Another paper presented by a representative from the Baitulmal, Perak Haji Mat Saad Hassan, focuses on the theory and logic behind business zakat, and the assessment of business zakat, based on the laws, rules and fatwas issued by the Council of Muslim Religion and Malay Customs, Perak.

seminar were scrutinized closely by the mass media, politicians, and intellectuals alike. Dato' Khalil Yaacob in his opening speech at the seminar had suggested a joint effort between the IRD, and the Baitulmal and Zakat administrators to study the possibility of imposing zakat on employment income.⁷⁴⁸ In May, 1986, the Pejabat Zakat, Kedah, in an attempt to be the first state to introduce this, announced that the formula to determine tax liability on income from employment, allowances, and gifts of more than \$1,000 per month had been finalized. The formula, given much press coverage, was found to be very greatly similar to the method of assessment used by the IRD since 1947, under the Income Tax Act, to determine income tax from individual taxpayers. The formula set the tax rate at 2.5% on net income after deducting expenses on behalf of the taxpayer himself (\$5,000), his wife (\$2,000), children (\$800 each subject to a maximum of five children), contributions to the Employees Provident Fund, and rebate (\$60 for self and \$30 for the wife).⁷⁴⁹ In conjunction with the formula a fatwa to legalize the imposition of zakat on employment income was announced by the Sultan of Kedah. With effect from 2nd January, 1986, employment income of Muslims in Kedah was subject to employment zakat.⁷⁵⁰

For comparison, the method used to determine tax liability under the proposed formula of the Majlis Ugama Islam Kedah and the assessment of an individual taxpayer's income tax liability by the IRD may be enumerated as follows:

Mr. X, a Muslim, is married with two wives and has one child aged one year. He works with an advertising company in Kedah. He managed to pay zakat for the year 1988 on 31st December, 1988 and paid fitrah of \$10 for himself, wives and his children. His gross income for the year ending 31st December, 1988 is as follows:

Employment:

--Salary	14,400
--Traveling Allowance	1,800

⁷⁴⁸"Seminar Zakat dan Cukai Pendapatan di Malaysia" APDC, KL, 5/5/86; "Zakat bagi yang berpendapatan \$1,000", *Mingguan Wanita*, 23/5/86.

⁷⁴⁹At this point, it was not clear whether a person with more than one wife would receive a deduction for all his wives. However, under the Income Tax Act, 1967, only the first wife is eligible for the relief.

⁷⁵⁰"Kedah keluar formula zakat gaji", *UMA*, 15/5/86; "Badan pemandu zakat dalam peringkat akhir kaji penyelarasan", *UMA*, 21/5/86.

--Moonlighting Job	<u>1,200</u>	17,400
Rental Income (net)		1,600
Part time Income		<u>1,000</u>
		<u>\$20,000</u>

From his employment income, \$1,200 was deducted as a contribution to EPF. He has also paid Takaful Insurance of \$600.00 and paid a premium of \$2,000.00 with MNI.⁷⁵¹

Employment Zakat	Income Tax
Aggregate Income \$20,000	Individual Income: Employment: 17,400 Rental Income (net) 1,600 Part time Income <u>1,000</u> Aggregate Income \$20,000
Less: Self Relief 5,000 Wife 2,000 Children 800 Rebate: Self 60 Wife <u>30</u> <u>90</u> Taxable Income <u>\$12,110</u> =====	Less: Self Relief 5,000 Wife (one only) 2,000 Insurance: Takaful 600 MNI 1,200 EPF <u>1,200</u> Total Deduction 3,600 (Maximun allowed is 3,500) <u>3,500</u> Taxable Income <u>11,150</u> =====
Employment Zakat=2.5% @ 12,110 = \$302.75	Tax on the first 5,000 325.00 Tax 12% on 3,850 <u>462.00</u> Income Tax 787.00 Less: (Rebate) Self 60.00 Wife 30.00 Zakat 228.75 Fitrah 10.00 <u>328.75</u> Total Income Tax 458.25
	Excess Profit Tax 5% (Taxable Income > \$300,000) - Development Tax 5% - (Business Income and Rental > 5,000) Tax payable for Y/A 1989 <u>458.25</u> =====

Meanwhile, an earlier press conference in May, 1985 held by the Majlis Agama

⁷⁵¹Datuk Haji Hassan Ibrahim, *Asas Pengiraan Zakat Perniagaan, Pengajian dan Pendapatan Bebas*, (Persatuan Kebajikan Islam Hasil Dalam Negeri, Kuala Lumpur, 1989) pp. 28-29.

Islam Kedah (MAIK) to announce the formula for assessing employment zakat naturally prompted the Federal Territory to hurriedly finalize its proposed payment of employment zakat by periodical deduction through the employer. By January, 1986, the Deputy Minister without portfolio in the PM's Department Dato' Dr Mohd Yusof Mohd Noor, announced in a press statement that two sub-committees of the Main Committee⁷⁵² headed by the Education Minister, consisting of experts in Shari'ah and civil laws had submitted their findings based on the zakat schemes currently in force in other Islamic countries, including Kuwait and Pakistan⁷⁵³ to a Main Committee. He added that the report would cover zakat on property, business and savings (*zakat wang*). In May, the report was submitted to the National Steering Committee on Zakat⁷⁵⁴, created in the middle of the previous year, for consideration for implementation nationally. The Federal Government hoped it would receive a positive response from Majlis Agama Islam and Department of Zakat in all the states.⁷⁵⁵

In September, 1986, Dato' Dr. Mohd Mohd Noor, prematurely announced at a press conference, that all Muslim employees in the private sector and government employees in the Federal Territories would soon be able to pay their zakat dues by salary monthly deduction. By this time, the Steering Committee on zakat had just finalized its draft proposals titled *Akta Zakat Wilayah Persekutuan* (The Federal Territory Zakat Act) for the formula and procedures to pay zakat by salary deduction scheme for relay to the Ministry of the Federal Territories for submission to the Parliament. If successful, the

⁷⁵²The Main Committee refers here is the task force reporting to the National Steering Committee on Zakat

⁷⁵³For a detailed account of Pakistan's Zakat and Ushr System, see *Introduction of Zakat in Pakistan*, (Council of Islamic Ideology, Islamabad, n.d)

⁷⁵⁴The Steering Committee consisted of representatives of the Departments of Religious Affairs of all states, the Federal Treasury, the Public Services Department and academicians.

⁷⁵⁵Press statement of Dato' Dr Mohd Yusof Mohd Noor in "Bayaran zakat melalui potongan gaji mungkin di laksanakan akhir tahun", *UMA*, 23/1/86; Press statement of Director General of Religious Affairs Division, PM's Department, Dr. Abdul Hamid Othman in "Jawatankuasa Pemandu kaji zadangan zakat melalui potongan gaji", *UMA*, 24/5/86.

Zakat Act would be a model for other states to adopt.⁷⁵⁶

It is worth noting that prior to this important event, Muslims in Malaysia had been spoonfed the notion that zakat was viable only in remote Malay villages and limited to the collection of zakat padi and the annual payment of fitrah, whilst in metropolitan and urban areas only fitrah was payable. The first seminar's success had started a sort of chain reaction. Intellectuals and academicians started to provide seemingly practical solutions to zakat collection and numerous papers were written, all with the themes of zakat administration and reform.

As a result of increasing awareness by the general public and within the IRD itself of Islamic precepts, the *Persatuan Kebajikan Hasil Dalam Negeri* (PERKIS) with the collaboration of the IRD and Baitulmal WP conducted the first zakat seminar at Asian Pacific Development Corporation in Kuala Lumpur (APDC) on 5th May, 1986 with the objective of modernizing the zakat administration and collection in Malaysia, and most importantly the formulation of consistent federalized fatwas on zakat. The seminar, a success in its own right, had inevitably received much attention from various sectors of the taxpayers who were eager to pay employment zakat.⁷⁵⁷

The role played by IRD in the foregoing had provoked much attention and interest nationwide amongst politicians, academicians and religious leaders. By early 1988, a subsequent seminar jointly organized by the IRD, the Department of Religious Affairs of the PM's Department and the Majlis Ugama Islam Wilayah Persekutuan was held in Kuala Lumpur with papers emphasizing the relation of zakat and income tax. During this seminar, the proposal for zakat on employment income became gradually

⁷⁵⁶“Badan pemandu zakat dalam peringkat akhir kaji penyelarasan”, *UMA*, 21/5/86; “Bayar zakat menerusi potong gaji di perkenal”, *BH*, 4/9/86; “Bayaran zakat melalui potongan gaji tidak lama lagi di Wilayah”, *UMA*, 4/9/86; “Akta Zakat Wilayah jadi contoh negeri lain”, *BH*, 6/11/86.

⁷⁵⁷Keynote speech of Chairman of PERKIS during its 11th AGM, 1992; Interview: Haji Mustaffa Ibrahim, 20/11/97.

more acceptable following papers presented by various established and well-known participants converging on agreement that income from employment was Islamically taxable.⁷⁵⁸ At this juncture, it became clear in the light of the positive response from the participants in the seminar that there should be a central role for the IRD in the reform of the zakat system and in the federalization process for collection.⁷⁵⁹

In November, 1988, IRD commitment towards the reform of zakat system was beyond doubt when another zakat seminar, jointly organized by the IRD, the Majlis Ugama Islam Penang, and the Pusat Islam of the University of Science, Penang was able to focus more on the relation between zakat and income tax. For the first time, IRD's own presentation, through a paper *Antara Zakat dan Cukai Pendapatan: Satu Analisis Penyelarasan* (Between Zakat and Income Tax: An Adjustment Analysis) by the head of the Penang Branch, Haji Abd Hamid Haji Mohd Hassan, who was one of the driving forces in the reformation, acted to spur interest and to help dismantle the barrier that held flat an efficient professionally administered zakat system was impossible. By this time, it appears that, apart from accepting the legal justification that income from employment was zakatable, the likely methods of assessment and collection were also successfully formulated.⁷⁶⁰

It worth noting that employment zakat becomes compulsory once the nisab has

⁷⁵⁸*Seminar Penyelarasan Zakat dan Cukai Pendapatan di Malaysia*, 28-29th March, 1988, Dewan Mukhtar, Pusat Islam Kuala Lumpur. Amongst the papers presented were "Penyelarasan Zakat Perniagaan, Pengajian dan Pendapatan Bebas dalam Perundangan Cukai" by Professor Tan Sri Dato' Dr Ahmad Ibrahim, UIA; "Konsep Dan Perbezaan Kaedah Pengiraan Zakat Pengajian Dan Perniagaan Bagi Individu Dan Syarikat" by Dr Ab. Rashid Hj Dail, UKM.

⁷⁵⁹Perakuan Jawatankuasa Kecil Kewangan Lembaga Urusan Zakat Malaysia (LUZAM), n.d., p. 9.

⁷⁶⁰*Seminar Zakat dan Cukai Pendapatan*, 5-6th November, 1988, Universiti Sains Malaysia, Penang. Papers presented were "Antara Zakat dan Cukai Pendapatan--Satu Analisis Penyelarasan" by Haji Abd. Hamid Hj. Mohd. Hassan, Branch Head, IRD Penang; "Zakat--Kewajipan dan Keberkesanannya" by Haji Mohd Yusoff b. Haji Abd. Latiff, President, Majlis Agama Islam, Penang. The IRD, operating under one Act with more than 5,000 trained staff nationwide of various specialities in accounting, law and operational mechanism supported by an extensive computer network since 1981, was confident that its vast resources and expertise were the only framework needed to produce an efficient zakat system. See Appendix 5.1--Proposed Integrated N/A of Income Tax and Zakat.

been satisfied. This means that the portion of the zakat due ceases to belong to the taxpayer and it is not legal for the taxpayer to spend the money. The IRD, realizing this dilemma, suggested that the issue of taking into account the previous year's payment of zakat in assessing a taxpayer's income tax liability must be resolved before the IRD be appointed a federal amil. It was suggested that:⁷⁶¹

1. in order to facilitate the payment of zakat, section 20 of the *Income Tax Act, 1967*⁷⁶² be amended in such a way that payment of zakat in the current year be used to set off current year tax liability.
2. the *Deduction from Emoluments: East Malaysia (Amendment) Rules 1971* be extended to West Malaysia.⁷⁶³

Table 5.1--Income Tax and Zakat Computations

A Muslim taxpayer with a monthly employment income of \$4,000 has a wife with two children under the age of sixteen.

⁷⁶¹*Seminar Zakat dan Cukai Pendapatan*, 5-6 November, 1988, Universiti Sains Malaysia, Penang. Papers presented were "Antara Zakat dan Cukai Pendapatan--Satu Analisis Penyelarasan" by Haji Abd. Hamid Hj. Mohd. Hassan, Branch Head, IRD Penang.

⁷⁶²*Income Tax Act, 1967* (ILBS, Kuala Lumpur, 1994) p. 22. Section 20--Basis year, "For the purpose of this Act, the calendar year immediately preceding a year of assessment shall constitute the basis year for that year of assessment".

⁷⁶³*Income Tax Act, 1967*, p. 270. In East Malaysia, under the PAYE (pay as you earn) system, current year scheduler monthly deduction is for current income, whilst in West Malaysia, under the STD (Scheduler Tax Deduction), current year monthly deduction is for prior year income.

Zakat Computation:		Income Tax Computation:	
Emolument	48,000	Emolument	48,000
<i>Less:</i>		<i>Relief:</i>	
Basic needs	15,000	Self	5,000
Administration Cost	1,500	Wife	2,000
Tanggungan Hutang	3,500	Child	<u>1,350</u>
	20,000		<u>8,350</u>
Balance subject to tax	28,000		
Zakat @2.5% =	\$700.00		39,650
Monthly Deduction = \$58.00			=====
		Income Tax =	6,587.50
		Less: Rebate =	<u>90.00</u>
		Tax Payable	6,497.50
			=====
		PAYE	= \$542.00 per month

Under the proposed modified PAYE (Pay As You Earn) system, a taxpayer's employer would submit notice of his monthly deduction as 542(58). The IRD upon receipt of the advice would credit the taxpayer's income tax account with \$ 484 and his zakat account \$58.⁷⁶⁴

3. Section 103 be amended so that income tax could be exacted from estimated income.⁷⁶⁵ This amendment would ensure that income from business would be subject to PAYE and business zakat paid on a monthly scheme.

It was also suggested that zakat on agriculture and livestock be exempted from the modified scheduler tax deduction due to the fact that the religious taxation system, until this time, only taxed agriculture produce, particularly padi, and livestock, despite the existence of other potentials taxpayers who were liable to zakat on property, savings etc.

⁷⁶⁴In fact MUIS (Majlis Ugama Islam Sabah) had proposed the same modified system few years earlier to the Ministry of Finance. As a result, MUIS was ordered to shelve this project indefinitely.

⁷⁶⁵Section 103(1)--Payment of Tax, "Subject to this section, tax payable under an assessment or a composite assessment shall on the service of the notice of assessment or composite assessment on the person assessed be due and payable at the place specified in that notice whether or not that person appeals against the assessment or composite assessment, as the case may be". *Income Tax Act, 1967 (Act 53) of Malaysia*.

In early 1989, the IRD through PERKIS published an official book which described in detail the basis of zakat assessment (employment, business and other incomes) and examples of accounts. Though the examples shown in the publication were crude and simple, it established a paradigm towards the federalization of zakat administration.⁷⁶⁶

The success of these zakat seminars, though still stuck at a theoretical level, had led to a third seminar in 1990 and eventually set the path toward the possibility of the federalization of zakat administration. With the blessing of the PM's Department, these important events had undoubtedly provoked the MAIN in all states to formulate a program of how to promote better understanding on zakat principles and higher compliance.⁷⁶⁷ In the following year meetings at Federal level were organized. By this time, Central Bank involvement, upon the directive of the Minister of Finance, was inevitable when a report *Cadangan kutipan zakat menerusi Jabatan Hasil Dalam Negeri* (Proposal to collect zakat through the IRD) was presented to the Federal government for consideration.

⁷⁶⁶Datuk Haji Hassan Ibrahim, et. al., *Asas Pengiraan Zakat Perniagaan, Pengajian dan Pendapatan Bebas*, (PERKIS, Kuala Lumpur, 1989).

⁷⁶⁷Copy of minutes of meeting of Jawatankuasa Seruan Zakat, 23/4/90.

The Federal Government's Direct Involvement

The year 1989 was a year of considerable consequence in which the Federal Government reaffirmed its commitment to standardize zakat administration. It started with the role of Pusat Islam as the Federal agency responsible for religious matters, when a workshop *Bengkel Taksiran Zakat Peringkat Kebangsaan* (National Level Zakat Assessment Workshop) was organized in May, followed by a more aggressive national campaign on 4th July, to spur awareness of the obligatory responsibility of Muslims to pay zakat, was launched by the *Yang di Pertuan Agong*, followed by individual states. As a result of the success of the campaign, the idea of some kind of federalized zakat administration became imminent, with the inception of the *Jawatankuasa Seruan Zakat* (Committee to promote zakat) coordinated by the Pusat Islam in the PM's Department involving all state MAIN, the IRD and various Federal government agencies, to analyze the effects of the campaign launched at state level throughout 1989.⁷⁶⁸ Resulting from these joint efforts, several states reported that the campaign had aroused some degree of awareness, with a significant increase in collection of zakat. One of the most important consequences of the nationwide campaign was the acknowledgment of various states of the need for an *Akta Zakat Negara* (Federal Zakat Act). Pusat Islam was quick to see this opportunity to unify all state religious enactments, and the *Akta Zakat Wilayah Persekutuan 1986* was distributed to all states to be used as model.⁷⁶⁹

In the following year, a number of significant processes, involving several

⁷⁶⁸Copy of Minutes of Meeting of Jawatankuasa Seruan Zakat Kebangsaan, Pusat Islam, 23/4/90.

⁷⁶⁹Copy of Minutes of Meeting of Jawatankuasa Seruan Zakat Kebangsaan, Pusat Islam, 23/4/90. See launching in Federal Territory, 4/7/89; Negri Sembilan, 10/7/89; Sabah, 11/8/89; Perak, 19/8/89; Perlis, 7/9/89; Trengganu, 12/10/89; Kelantan, 21/10/89; Selangor, 1 Muharram 1410. Revenue generated in 1988 and 1989 as a result of the campaign on awareness:

State	1988 (\$)	1989 (\$)
Kelantan (Zakat Harta)	680000	845000
Perak	4100000	5500000
Federal Territory	5090000	6290000

Federal agencies and universities, came together to prompt a re-evaluation of the 1989 campaign and to inculcate a higher degree of awareness amongst Muslims in general and the state religious authorities in particular of the need for a unified "Zakat Act". In May, 1990, an international zakat seminar with papers presented on contemporary applications of zakat, jointly organised by the Pusat Islam as host, the Zakat and Income Tax Department of the Ministry of Finance of Saudi Arabia, the International Shari'ah Board for Zakat of Kuwait, Islamic Research and Training Institute of Islamic Development Bank in Jeddah, became a stepping stone and a source of inspiration for the "Development of Islamic Economic Resources in Malaysia".⁷⁷⁰

Following these events, later that year and in 1991, the PM's Department, involving various Federal agencies, initiated programs to develop, a *Yayasan Zakat Negara* (National Zakat Foundation), an *Amanah Saham Muslimin* (Muslim Stock Trust), the corporatization of Muslim assets, housing projects for low income Muslims, and the creation of a Muslim information database. Current existing programs such as those of the Yayasan Pembangunan Ekonomi Islam Malaysia (YPEIM), Islamic Bank and all state Baitulmals would be subject to further development to maximize their economic potentials. The Working Committee for these programs, in its deliberations, concluded that there were at least six justifications for the establishment of a National Zakat Foundation:⁷⁷¹

1. It was statistically found that the development and massive migration were

⁷⁷⁰*Third Zakat Conference*, Kuala Lumpur, 14/5/90-17/5/90. Amongst the papers presented were "A Comparative Study on Zakah Systems: The General, Administrative and Organizational Aspects" by Fuad Abdullah al-Omar; Shari'ah, Financial and Administrative Controls of the Moderns Zakah System in Sudan" by Ahmad Ali Mohammed Ahmad al-Saoury, Director General of Zakah Bureau, Sudan; "Applied Institutional Models for Zakah Collection and Distribution in Islamic Countries and Communities" by Monzer Kahf; "Relationship between official zakah collections and voluntary payments to charitable organizations" by Faiz Mohammad, IIU, Pakistan; "Zakatable Funds" by Ahmed Ali Abdullah; "Zakat: A Case Study of Malaysia" by Jamil Othman, *et.al*, IIU, Malaysia.

⁷⁷¹Report of Working Committee on the formulation of main programmes for the development of Islamic economy, PM's Department, n.d.; Report of Action Committee to the Steering Committee on the Development of Islamic Economy, October, 1990; Report of the Information Database Working Group to the Steering Committee on the Development of Islamic Economy, Closed Workshop, Malacca, January, 1991.

focused on developed states such as Penang, Selangor and the Federal Territory. In effect, gross revenues from zakat generated in these states was much higher than in states such as Kedah and Kelantan.

2. Concentration of permanent residents in large cities was a result of massive migration from various states. For instance, Muslim entrepreneurs, millionaires, and middle class people were mainly found to be resident in the Klang Valley. It was contended that zakat generated from these high income areas should be disbursed to other needy areas to alleviate economic disparities.
3. Since the Federal Government was losing revenue as a result of the rebate system, it made sense that it be given the task of collecting and disbursing zakat centrally.
4. Efficient zakat administration needs complete information on taxpayers. For this reason, the *Yayasan Zakat Malaysia* would be the most appropriate centralized corporate mechanism to handle the computerised Muslim information database.
5. Since zakat disbursement is closely tied to the eradication of poverty as stipulated by the first two asnaf (destitute and poor), it is imperative that the MAIN and their Departments of Religious Affairs operate in tandem with the Federal Government's poverty eradication programs.
6. The Federal Government in recent years had tried to inculcate the concept of a caring society. It was argued that the role of the *Yayasan Zakat Negara* would be vital in inculcating such awareness.

By early 1992, there was a deeply felt need to establish a corporate vehicle Administration of Zakat Malaysia Sdn Bhd, to be administered collectively by the MAIN, which would have the same corporate capabilities as other Islamic financial agencies such as the Bank Islam Malaysia Bhd, Amanah Saham Nasional Berhad (ASNB), Lembaga Urusan Tabung Haji (LUTH), Bank Simpanan Nasional (BSN), and Permodalan Nasional Berhad (PNB). In a seminar held in Kedah in 1992, attended by Muftis and representatives of MAIN of all states, zakat officers, academicians, and corporate figures, it was highlighted that under the current economic and fiscal policy, the zakat system was not able to render any effect on Malaysia's economic and fiscal

growth. This argument was obviously substantiated by the fact that the gross collection in all states had been only \$70 million in 1991. The Baitulmal of the Federal Territory estimated that total collections would amount to at least \$350 million if the proposed corporate vehicle was successful.⁷⁷²

In September, 1992, pursuant to one of the resolutions passed at the Third Congress of the Bumiputra's Economy held in January, 1992, the Minister in the PM's Department, Datuk Syed Hamid Albar, announced in a press statement release that the Federal Government had agreed to adopt the recommendation for establishment of an Administration of Zakat Malaysia Sdn Bhd. The government reiterated that it had no intention of taking over the administration of zakat at the state level which in return the corporate vehicle would get the approval and cooperation of all the states. Under the new corporate vehicle, zakat defaulters would be subject to legal action. Despite the standard penalty provisions vested in almost all the states' religious enactments, the Federal Government would prefer the use of moral education to inculcate the divinely ordained duty for Muslims to fulfil their zakat liability.⁷⁷³ As far as the records show, from 1968 to 1992, it was in any case abundantly clear that the "wait and see" policy of the Council of Rulers, which was detrimental to the meaningful federalization of zakat administration, had prevented the transfer of control from the state jurisdiction to that of the Federal government.

Though the development of a centralized form of management for the collection and disbursement of zakat had been debated at length in the media and elsewhere,⁷⁷⁴ the

⁷⁷²"Selaraskan zakat dengan perkembangan ekonomi", *UMA*, 19/3/92; "Pungutan zakat bersepadu disokong", *Al-Islam*, May, 1992; "Zakat: alternatif basmi kemiskinan tahun 2020", *Warta Perdana*, February, 1992; "Reformasi zakat disokong", *BH*, 31/10/92; "Syarikat urus zakat ditubuh", *BH*, 16/9/92.

⁷⁷³"Syarikat urus zakat ditubuh", *BH*, 16/9/92; "Selaras Baitulmal kaedah terbaik", *BH*, 13/1/92.

⁷⁷⁴"Pelabur wajib bayar zakat", *BH*, 27/7/92. The role of the mass media in inculcating awareness at national level of the significance of zakat in Islamic fiscal policy had without doubt greatly assisted the Federal Government's desire to promote the concept of federalisation.

success of the proposed reform depended on the cooperation of some of the state religious authorities, some of which continued to adopt a policy of "wait and see".⁷⁷⁵

A deeper direct involvement of the Federal government in zakat administration became imminent when Anwar Ibrahim, the Deputy Prime Minister,⁷⁷⁶ suggested that the IRD, in view of its expertise and experience in the collection of the direct taxation linking the Peninsula, Sabah and Sarawak since 1948, supported by an extensive computerised networking system since 1981, be given the authority to collect religious dues in the expectation that the increased revenue generated would be expended to provide better social benefits according to Islamic law, to the Muslim community as a whole. The Central Bank, acting on a directive from the Finance Minister, submitted a draft proposal pertaining to the reform and federalisation of the zakat system. The report, dated August, 1992, suggested that:⁷⁷⁷

- ii. zakat collected by IRD include zakat from employment, corporations (business), savings, shares/stocks, and gold and silver. Collection of zakat from agriculture and fitrah would still be administered by state Baitulmals because these latter dues under the Shāfi'ī doctrine, involve physical contact between the payer and the amil.
- ii. distribution of zakat collection to the states would be on the basis of the number of Muslims in that state.
- iii. a Zakat Unit be created in IRD to facilitate the assessment and collection of the religious dues, which would be deposited into a special consolidated account in

⁷⁷⁵"Segerakan kajian zakat berkomputer", *BH*, 22/10/92. For instance, the Chairman of the Religious Affairs Committee, Johore in his keynote speech when officiating at a "Muzakarah Zakat Peringkat Kebangsaan" in Johore urged the religious authorities to embark on a feasibility study in computerising the existing zakat system without any reference to the hot topic currently being debated on the federalisation of the zakat administration.

⁷⁷⁶Press statement of the Finance Minister, "Zakat mungkin diselaraskan diperingkat pusat--Anwar", *UMA*, 31/10/92.

⁷⁷⁷Paper presented by Bank Negara Malaysia, "*Cadangan Kutipan Zakat Menerusi Jabatan Hasil Dalam Negeri*", 31/8/92.

the Central Bank.

- iv. the functioning of state MAIN and Baitulmals be monitored through the secondment of a Federal officer to each entity so that the distribution of zakat collected would be maximized according to the eight asnaf.

The 1993 Budget--The Federal Government's Blessing

The report submitted by the Central Bank was adopted by the Finance Ministry when on 31st October, 1992, during the tabling of the 1993 Federal Budget, the Finance Minister announced that the collection of zakat would be normalized and standardized at a Federal level, and with the cooperation of the IRD an inquiry would be conducted into the possibility that the IRD be appointed as a federal amil.⁷⁷⁸ The collection would then be distributed to all states based on an agreed formula. In conjunction with the federalization of zakat collection, the Federal Government had embarked on a reform of the zakat system that would restore its relevance and efficiency. The Government pledged to involve ulama^c, academicians and the MAIN of all states in attaining this objective.⁷⁷⁹ Though a fatwa on employment zakat had not yet been issued, on 9th December, 1992, in a meeting of the *Majlis Fatwa Kebangsaan*, all states except Perak agreed in principle that income from employment is taxable.⁷⁸⁰

With the announcing of the 1993 Budget, the Federal Government's direct involvement in the reformation of the zakat system was naturally getting full support from various Islamic movements and the public at large. By this time, the role of the IRD in becoming a federal amil of the new proposed system was crystal clear.⁷⁸¹

By 1993, Malaysia's economy was in an encouraging position and increasingly resilient, having registered strong growth for five consecutive years. As a result of the

⁷⁷⁸The term "federal amil", defined as a tax collector for the whole of Malaysia, was at this point alien to the territorial system of zakat administration. In the current system at state level, the amil was responsible to his qariah only, and a corporate amil like the PPZWP had a jurisdiction limited to the Federal Territory.

⁷⁷⁹Press statement of the Finance Minister, "Zakat mungkin diselaraskan diperingkat pusat--Anwar", *UMA*, 31/10/92; LHDN/KL, *The 1993 Budget*, (Jabatan Perkhidmatan Penerangan Malaysia, KL) pp. 5, 33.

⁷⁸⁰Copy of unpublished correspondence of Deputy Director General IRD to Director General IRD, 19/3/93.

⁷⁸¹"Reformasi zakat disokong", *BH*, 31/10/92.

inception of Pusat Pungutan Zakat Wilayah Persekutuan (PPZWP) (Federal Territory Zakat Collection Centre) in 1991 with an aggressive campaign underpinned a favourable economic condition, had resulted in an increase in the awareness among Muslims of their duty to fulfil their obligations to pay their zakat. During the tabling of the 1993 Budget, the government acknowledged that zakat remained relevant as a basic economic and welfare institution. However, the potential of the zakat system had not been fully tapped due to management and administrative problems and the existence of separate zakat collection mechanisms employed by the religious authorities of the states and the Federal territories. In attempt to streamline the zakat system, the Federal government had started to study the possibility of introducing reforms which would restore the relevance and effectiveness of this institution to the Muslim community. The most important measure, the government pledged, was to design a mechanism to avoid overlapping payments of zakat and income tax. It was suggested that this could be achieved by coordination of the collection of zakat by the Federal government through the IRD. The zakat collected would then be distributed to the states based on a formula agreed upon through discussions with religious experts and intellectuals as well as the state religious authorities.⁷⁸²

As might have been expected, the motion tabled in the 1993 Budget was bluntly rejected by the PPZWP which feared that the vast resources and expertise of the IRD would generate stiff competition and might eventually force out of existence the privatized operation of the PPZWP in the Federal Territory. However, despite unpublished counter-statements issued by the PPZWP, the Chairman, Datuk Abdul Rahim Abu Bakar, vehemently denied in a press statement that PPZWP opposed the proposed appointment of the IRD as a federal amil. He argued, however, that zakat taxpayers preferred to pay at payment counters such as in the PPZWP because they

⁷⁸²LHDN/KL, *The 1993 Budget*, (Jabatan Perkhidmatan Penerangan Malaysia, Kuala Lumpur) pp. 5, 33.

wanted to conduct their *‘akad* in an *ibadah* environment.⁷⁸³

The PPZWP as a corporate entity staffed by professionals saw its two years in operation, with a 48% increase in collection, as an ideal model for other states to follow. In response to the Finance Minister's 1993 Budget proposal, the PPZWP argued that they could handle the job efficiently without the IRD's involvement. They further reiterated that it was paramount for the Federal government to address the issue of distribution before embarking on any reform because the current zakat administration was incapable of formulating efficient disbursement programmes according to the eight *aṣnāf* despite the current annual collection of almost RM70 million by the fourteen MAIN. This was evident from the fact that an estimated 50% of the zakat collected had not been distributed but was held in Baitulmals. The PPZWP contended that IRD was not a suitable candidate as an *amil* for the Federal government on the grounds that the scope of taxation and the basis of assessment were distinctly different between zakat and income tax.⁷⁸⁴

Despite the PPZWP's arguments, all the innovations put forward by intellectuals from the seminars in 1986 to the Central Bank's paper in 1992, tended to see the IRD as being the central zakat collection agency. On 19th February, 1992, the *Bahagian Hal Ehwal Islam* (BAHEIS) of the PM's Department organized a seminar in Alor Star with the emphasis on zakat. On 26th September the same year, the Federal Government's Economic Planning Unit (EPU) called for a meeting to establish a corporation to be styled *Syarikat Pungutan Zakat* (Zakat Collection Corporation). In a three-day seminar on 21-23 September, BAHEIS organized a *Muzakarah Penyusunan Zakat Peringkat Kebangsaan* (Discussion on rearrangement of zakat at national level) in Johore. It was

⁷⁸³See counter statement of PPZWP submitted unofficially to PERKIS; "PPZWP nafi tidak setuju dengan JHDN", a newspaper report, 1994 as cited in PPZWP, Annual Report, 1994, p. 70. From the IRD perspective, the chairman of the PPZWP counter-statement could be seen as the IRD, which is obviously a secular taxation machinery, is not a suitable environment for religious related activities.

⁷⁸⁴Counter statement of PPZWP submitted unofficially to PERKIS, n.d.

in these two occasions⁷⁸⁵ that the IRD representative, in an attempt to divert their focus on the IRD, contended that the idea to promote IRD as a central zakat collection agency was obsolete since the Department at that time was in the midst of introducing a Self-Assessment System and payment of taxes through the bank. Though on both occasions a proposal to create a corporate Zakat Collection Agency was unanimously agreed upon by representatives from all states, the Federal government in a surprise move, instead announced the IRD as a potential candidate.⁷⁸⁶ At this juncture, it was clear that the Federal Government was indeed concerned to formulate the best alternative to gain control of the collection of zakat and to influence its disbursement.

Late in 1992, pursuant to the resolution passed in the 1993 Budget, meetings involving the Treasury and the IRD were held on 13th November and 17th December, to discuss the “paradigm vision” of a new zakat administration for which the IRD was to act as a centralized collection center.⁷⁸⁷ After realising that the department was the key player in 1986, the Deputy Director General, Haji Abdul Hamid Haji Hassan naturally committed IRD to this new role.

By early 1993, the IRD had begun a feasibility study with the appointment of a “Zakat Working Committee” consisting of experienced staff from the Collection and Assessment Branches and other Divisions. Data extracted from the IRD’s database showed that 258,008 out of 990,369 tax payers were resident individual Muslims, contributing revenue of RM 6,314,574,070. From this figure, 2.5% would generate zakat revenues of RM 157,864,351. After a series of extremely productive deliberations

⁷⁸⁵See footnote 747; footnote 757; footnote 760.

⁷⁸⁶Copy of unpublished correspondence of Deputy Director General IRD to Director General IRD, 19/3/93.

⁷⁸⁷Copy of Minute of Meetings of IRD’s Zakat Committee, 14/6/93, 7/7/93, 22/7/93; “Urusan Dan Metodologi Pungutan Zakat Melalui JHDN”, IRD, 1993; “Asas Dan Kaedah Pengiraan Zakat Oleh JHDN”, IRD, 1993.

and discussions, the Zakat Working Committee made interim suggestions including:⁷⁸⁸

1. Creation of a separate database for zakat payment.
2. Annual operational cost would be no more than 1/24th of total collection, though the IRD was eligible for 1/8th as an *amil*.
3. Zakat paid through the IRD payment system would be set against income tax in the same basis year automatically whilst zakat paid through other channels, such as the PPZWP or Baitulmal, would be allowed rebate in the following year and must be evidenced by official receipt.
4. Arrears of zakat paid through the IRD collection mechanism would be rebated under section 6A(1) and (3) of the Income Tax Act, 1967.
5. Implementation of the new modified assessment and collection mechanism, which was anticipated to increase assessment workload by 20%, would be launched in phases commencing with individual zakat with effect from Y/A 1995.

Despite a series of productive meetings conducted internally, the IRD was extremely careful in its proposals because of the mounting operational constraints it was currently facing, compounded by a huge backlog of unsettled assessments, almost four billion ringgit in arrears of tax, and a massive modernization of IRD's computer system. It was at this point that it appears that the IRD's commitment became uncertain.⁷⁸⁹

By the end of 1995, the resolution passed in the 1993 Budget had still not been acted upon. However, the Deputy Minister in the PM's Department was confident that the procedures of zakat payment through the IRD, which at that time was being finalized by the Ministry of Finance and the Pusat Islam (as a secretariat in rationalizing the collection and to formulate an organization for disbursing the consolidated revenues to all the states), would be enforced from the middle of 1996. It worth noting that by this

⁷⁸⁸Summary of Technical Paper on Zakat Collection through the IRD, n.d.

⁷⁸⁹Copy of unpublished correspondence of Deputy Director General IRD to Director General IRD, 19/3/93; Copy of Minute of Meetings of IRD's Zakat Committee, 14/6/93, 7/7/93, 22/7/93.

time, in some states, the religious affairs establishment was financed from the proceeds of the zakat and fitrah. Should the system fail due to unforeseen circumstances, the Federal Government guaranteed direct financial assistance to the respective states from the Federal Treasury, as was currently done in the cases of *Sekolah Agama Rakyat* and Qur'ān reading classes.⁷⁹⁰

By the end of 1995, the proposed system, though it had not yet been finalized, had undergone substantial development. Discussions with various federal agencies and state religious authorities, including the PPZWP, had resulted in a range of solutions. Public acceptance was forthcoming, not only toward employment zakat but also to property zakat such as gold, silver, shares/stocks and savings, and agricultural produce. At this point, how the revenue was collected was as important as the disbursement. The scandals and shenanigans that had afflicted zakat collection authorities in some states had resulted in giving many Muslims cause for concern. For instance, in the case of the Majlis Agama Islam Wilayah Persekutuan (MAIWP) in early 1994, as raised in the Dewan Negara, the setting up of companies from zakat funds was deemed not viable if such corporate entities were not professionally managed or ended being wound-up as bankrupt.⁷⁹¹

Under the proposed system, Muslim taxpayers would be able to pay their zakat dues through the IRD and the sums would be deducted from their income tax directly. It was argued that the system would enable large organizations with employees in different states to facilitate deductions through a company's centralized payrolls system—in contrast to the inconvenience employers had found with zakat collection by state MAIN. In addition, the PPZWP contended that zakat collection through the IRD would not affect the secular revenue collected by the IRD since even if all Muslims eligible to

⁷⁹⁰Newspaper article "Kutipan zakat menyeluruh tahun depan", in PPZWP, Annual Report, 1995, p. 74.

⁷⁹¹"Ingatan kepada MAIWP", *BH*, 15/8/95; "MAIWP boleh tubuh syarikat", *BH*, 7/9/95; Newspaper article "New system for zakat collection", quoted in PPZWP, Annual Report, 1995, p. 77. See also footnote 802

pay zakat did, it was estimated that about RM150 million from zakat on employment income would be generated. Its impact on the Federal Government's revenue would be negligible as compared to the revenue generated by the IRD of about RM22 billion annually.⁷⁹² At this point, PPZWP had obviously noted the impact of the IRD's role in the proposed system to its own annual revenue. Since the proposed system would be convenient to taxpayers, it is highly likely that PPZWP's gross revenue would decline by about 28%.⁷⁹³ However, at this juncture, the mechanism and amount to be deducted from each taxpayer were still ambiguous depending on whether the estimated zakat liability be deducted on top of the current compulsory income tax deduction, resulting in a higher monthly deduction, or both deductions be normalized to arrive at a net tax burden. It was believed that the proposed system, being convenient and ensuring better control of funds, would encourage more Muslims to fulfil their duty.

Though the basis of assessment between the income tax and employment zakat was classically different, however, as has been discussed in this Chapter, Kedah's basis of assessment adopted by the Majlis Agama Islam Kedah followed the IRD's established assessment method but with minor modifications.⁷⁹⁴ PPZWP had erred when it cautioned the government that the issues of niṣāb (RM2,700) and the minimum chargeable income bracket (RM2,500) should be streamlined. PPZWP suggested that

⁷⁹²Newspaper article "New system for zakat collection", quoted in PPZWP, Annual Report, 1995, p. 77.

⁷⁹³Yayasan Taqwa Wilayah Persekutuan Berhad, Annual Report 1992, p. 27; PPZWP, Annual Report, 1994, pp. 31, 56; PPZWP, Annual Report, 1995, p. 33; PPZWP, Annual Report, 1996, p. 18. Gross Collection by PPZWP for the financial year 1991 and 1996:

Year	1990	1991	1992	1993	1994	1995	1996
Zakat on Employment Income (RM million)	n/a	3.7	5.1	7.3	9.4	8.9	11.8
% of Employment Income against Gross Revenue		25.3	24.1	27.1	27.2	26.3	27.5
Gross Revenue (RM million)	7.6	14.6	21.2	26.9	34.6	33.8	42.9

⁷⁹⁴See page 280 for Kedah's formula for assessing zakat liability on employment income.

the religious authority follows the IRD's minimum chargeable income bracket and accept RM2,500 as a niṣāb.⁷⁹⁵

Though by this time, the progress of the proposed system was promising, despite objections from conservative Muslim quarters that the payment of zakat required the taxpayer to come personally to the zakah collection point and pay zakat by making a verbal statement of his intention to the amil, the PPZWP rebutted these arguments, based on the contention that a verbal statement of intent is not obligatory, and a written declaration would fulfil the same purpose.⁷⁹⁶

⁷⁹⁵Newspaper article "New system for zakat collection", in PPZWP, Annual Report, 1995, p. 77.

⁷⁹⁶*Ibid.*, p. 77.

Privatization of Zakat Collection--Advent of the Zakat Collection Centres

Pusat Pungutan Zakat Wilayah Persekutuan (PPZWP)

By the end of 1988, pursuant to a series of resolutions passed in numerous international zakat seminars for the establishment of a national level and a more systematic administration of zakat, the Islamic Religious Council of the Federal Territory (MAIWP) embarked on a study to create a corporate based collection system in Kuala Lumpur which would operate pro-actively with the objective of increasing the collection of zakat to \$12 million and to be a forerunner and model for other MAIN. Subsequently, in July, 1989, as a result of a suggestion from Dato' Abdul Rahim Abu Bakar formerly the Chief Minister of Pahang, the Minister without portfolio at the PM's Department Dato' Dr. Mohd Mohd Noor, submitted draft guidelines on the possibility of administering the collection of zakat corporately. The appointment in August of a consultancy firm, Coopers & Lybrand, to study and report to the MAIWP on the possibility of collecting zakat through a corporate mechanism resulted in a report made to the Baitulmal Committee.

Subsequently, in December, a working committee was appointed to establish the *Pusat Pungutan Zakat Wilayah Persekutuan* (PPZWP). In addition, with the intention of establishing a complete database of the Muslim taxpayers in the Federal Territory of Kuala Lumpur who were liable to zakat, MAIWP contemplated seeking the cooperation of the Employees Provident Fund and the Inland Revenue Department. The project took seventeen months to get off the ground and it cost the MAIWP \$750,000 for consultancy fees and to establish the first *Pusat Pungutan Zakat* counter in December, 1990. On 8th March, 1991, the PPZWP was officially opened by the Prime Minister.⁷⁹⁷ For the first time in the history of the zakat system, PPZWP proudly disclosed that the

⁷⁹⁷PPZWP, Annual Report, 1992; "Pusat Pungutan Zakat Wujud Cara Korporat", *Al-Islam*, February, 1991, pp. 33-36; "Mempermudahkan kutipan zakat", *BH*, 9/1/96; Interview with Hj Ismail Saad, the General Manager of PUZPP, Penang, December, 1997; Interview with the Head of Development, PPZWP, December, 1997.

issuance of official receipts would be generated by computer.⁷⁹⁸ The incorporation of PPZWP in effect became the turning point and inspired efforts by other MAIN to modernize their collection mechanisms, spurring the process of decentralization as opposed to the efforts of the Federal Government to centralize the collection and disbursement of zakat.

On 3rd January, 1991, MAIWP in a bold political move created a Foundation called *Yayasan Taqwa Wilayah Persekutuan Berhad*⁷⁹⁹ acting as an investment arm of the MAIWP. The Foundation then created a corporate entity *Pusat Pungutan Zakat Wilayah Persekutuan* (PPZWP) via the operation of a proxy company called *Harta Suci Sdn Bhd*⁸⁰⁰ acting as a collection agency for the MAIWP. Revenue was collected after deducting a portion for satisfying PPZWP's operating expenditure, it was then distributed by the Baitulmal WP after getting approval from the Committee of Baitulmal WP. In its second year of operation, PPZWP's collection had increased by 48% to slightly over RM20 million as compared to over RM13 million in 1991.⁸⁰¹

⁷⁹⁸PPZWP, Annual Report, 1994, p. 5.

⁷⁹⁹In May, 1992, Yayasan Taqwa was registered with the Ministry of International Trade and Industry, and the Finance Ministry as a bumiputra investor for investing its excess revenues in new issues on the stock market. In the same year, Yayasan Taqwa established another corporate entity called *Institut Professional Baitulmal Sdn Bhd* (IPB) conducting professional and semi-professional courses such as a Diploma in Business Administration, Diploma in Accounting and professional programmes such as "The Institute of Chartered Secretaries and Administrators (ICSA). See Yayasan Taqwa Wilayah Persekutuan Berhad, Annual Report 1992; "Agensi-agensi amanah perlu sokong kewujudan IPB", *UMA*, 21/7/92.

⁸⁰⁰MAIWP, *Baitulmal Wilayah Persekutuan*, (Kuala Lumpur, n.d.) p. 20. Cf. private letter from the Deputy Director General of IRD Abd Hamid Mohd Hassan to Director General of IRD, Dato' Abu Bakar Mohd Noor, 19th March, 1993.

⁸⁰¹Baitulmal WP, *We Care*, Vol. 2, No. 4 (Apr-Jun, 1993) p. 42; Baitulmal WP, *Berita Baitulmal*, Bil. 1, Tahun 10, (Jan-Feb, 1993) pp. 5-6; *Al-Islam*, "Reformasi Pungutan Zakat, February, 1993, p. 10; Yayasan Taqwa Wilayah Persekutuan Berhad, Annual Report 1992, p. 27; PPZWP, Annual Report, 1994, pp. 31, 56; PPZWP, Annual Report, 1995, p. 33; PPZWP, Annual Report, 1996, p. 18. Gross Collection by PPZWP for the financial year 1991 and 1996:

Type of Zakat / Year	1990*	1991	1992	1993 (% Inc)	1994	1995	1996
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Despite the fact that the establishment of various corporations such as the PPZWP, *Pusat Rawatan Islam*, under its proxy corporate entity *Yayasan Taqwa Wilayah Persekutuan Berhad* under the Companies Act, 1965 was indeed illegal under the current Administration of Muslim law in the Federal Territory, the government turned a blind eye on these issues. It was not until late 1995 that the Parliament approved the proposed amendments to the law.⁸⁰²

PPZWP's brief success was proudly acknowledged by the chairman of MAIWP, Dato' Dr Mohd Yusof Mohd Noor, who admitted that the poor collections prior to the inception of PPZWP were due not to the ignorance of the Muslims in general but

Employment Income	n/a	3.7	5.1	7.3 (38%)	9.4	8.9	11.8
Business	n/a	1.6	2.4	1.8 (46%)	4.3	3.3	4.3
Savings	n/a	4.1	5.5	6 (37%)	7.4	6.9	7.8
Qadha (Arrears)	n/a	0.6	0.9	0.9 (51%)	0.8	0.8	1.1
Property	n/a	3.3	6	9.4 (77%)	10.9	12.1	16
Sub-total zakat on wealth	n/a	13.3	19.9	25.4	32.8	32	41
Fitrah	n/a	1.1	1.2	1.3	1.5	1.5	1.6
Other Collections	n/a	0.2	0.1	0.2 (48%)	0.3	0.3	0.3
Gross Revenue (RM million)	7.6	14.6	21.2	26.9	34.6	33.8	42.9

Total number of taxpayers in the Federal Territory increased from 7,661 in 1990 to 16,205 in 1991. See "Zakat: alternatif basmi kemiskinan tahun 2020", *Warta Perdana*, February, 1992.

*Collection in 1990 was under the jurisdiction of the Baitulmal of the Federal Territory.

N/a denotes "data not available".

⁸⁰² "Ingatan kepada MAWIP", *BH*, 15/8/95; "MAIWP boleh tubuh syarikat", *BH*, 7/9/95. Until September, five of MAIWP's investments resulted in massive losses and in the process of liquidation, which MAIWP argued were due to unfavourable economic conditions. After these unfortunate investments, the MAIWP pledged that it would invest in less risk-prone investments such as health, education, food manufacturing and housing. In a Parliamentary debate, the MAIWP was cautioned by members of the Dewan Rakyat about the issues of misappropriation from the Zakat Fund and mal-administration (*salah guna kuasa*) that had plagued the MAIWP in early 1995. A new clause Section 8 was introduced in the 1995 amendment to allow MAIWP establish a corporate vehicle to expand and maximize its resources in the interests of the ummah.

attributable to the acute lack of infrastructure, inefficient administration and lack of campaign to increase compliance. With its track record of 48% increase in collection per annum which PPZWP claimed prior to the inception of a corporate body, PPZWP progress moves a step ahead when it plan to promote payment of zakat by credit cards; using it as on-line banking facilities, and focussing its resources on commercial entities wholly-owned by Muslims.⁸⁰³ Though it was argued that credit cards would be used as a banking facility to make payment of zakat electronically, the idea was abandoned due to current banking system's intimate link to *usury* (interest) which PPZWP feared would spark representations from conservative Muslims.⁸⁰⁴

By early 1993, only the MAIWP had successfully established zakat collection through its corporate Pusat Pungutan Zakat. Other MAIN were still unclear to the extent that some of the MAIN were of the opinion that income from employment was not taxable. At this juncture, the idea of a more radical reform of zakat collection at national level (other than zakat padi) was thought to be a better way of solving the inefficiency of the current zakat system. Traditional zakat collection was not transparent in its operation and how the revenue generated was disbursed did not motivate Muslims to pay zakat to state institutions. Public exposure of the swindling and embezzlement by some trusted members of the zakat administration had severely dented public confidence.⁸⁰⁵ As an alternative, if the reform at state level was found to be unworkable, the task of collection, it was suggested, should be given to the Inland Revenue Department (IRD) which would soon be operated as a Board. The Chairman of PPZWP, Dato' Rahim Bakar, suggested that a special division within the IRD could be established, utilizing IRD's vast resources and having a complete database of Muslim taxpayers and corporations. Collections would then be disbursed to states on an agreed

⁸⁰³Baitulmal WP, *Berita Baitulmal*, Bil. 1, Tahun 10, (Jan-Feb, 1993) pp. 5-6.

⁸⁰⁴Interview with Hj Ismail Saad, the General Manager of PUZPP, Penang.

⁸⁰⁵“Reformasi Pungutan Zakat, *Al-Islam*, February, 1993, p. 10. For a detailed account on the problems of zakat machinery, see Chapter 4.

formula.⁸⁰⁶

Though the PPZWP's increase in collection of RM7.5 million in 1994 could be partially attributed to its aggressive marketing strategy in a booming economy, and public awareness fostered by the Federal Government's desire for a reformation of the zakat system, PPZWP's achievement in luring Muslims in the business community to pay their zakat dues was not so successful, as was shown by the 1994 revenue statistics. Zakat from business in 1994 accounted for only about 13.0% (RM4.3 million) of the total collection whilst revenue generated from property (RM10.9 million) and employment (RM 9.4 million) accounted for 61.3%. This situation is easy to explain. Until 1994, payment of zakat by corporate entities was given no rebate under the Income Tax Act. It was highly likely under such circumstances that the secular tax obligation would be given priority over the religious tax obligation by corporate entities. PPZWP estimated that at least twenty Muslim entrepreneurs, who had an estimated liability of at least RM300,000, were not paying zakat on their business profits.⁸⁰⁷

By early 1995, PPZWP performance had without doubt been a success story. As a corporate body, PPZWP had enjoyed unlimited opportunities to plan and run its machinery. With an adequate budget at its disposal, numerous operational activities, opening of payment counters after office hours, and an increase of public awareness in a booming economy, the collection of 1994 rose by RM7.5 million compared with previous years. Collection of RM 14.07 million in the month of December 1994

⁸⁰⁶*Ibid.*, p. 10.

⁸⁰⁷"20 usahawan tidak bayar zakat di kesan", *UMA*, 6/1/94; "Zakat: Tidak Banyak Golongan Korporat Menyumbang", *Al-Islam*, October, 1996, pp. 28-30; "MAIS jangka kutip zakat RM50 juta menjelang 2000", *BH*, 20/12/95; "Selangor expects RM50m in tithes by 2000", *NST*, 20/12/95; "Kutipan zakat diramal RM50 juta setahun", *BH*, 20/12/95. See also footnote 801. In Selangor, by the end 1995, statistics had shown that only 5% of Muslim entrepreneurs paid their business zakat. In Pahang, MAIP reported that by the end of 1995, statistics had shown that only 25% of individuals, entrepreneurs and corporations had paid zakat. However, in Trengganu, the compliance rate was much better than other states. It was estimated that in 1996, the compliance rate would be 85% generating a revenue of RM9 million. See "MAIP anggarkan pungutan RM20 juta", *UME*, 3/2/96; "Kutipan zakat meningkat", *Harian Metro*, 31/1/96; "matlamat kutipan RM8 juta zakat tahun ini", *UME*, 4/1/96.

accounted for 43% of the annual collection, of which RM 8.84 million was collected in the last week of that month (62% of December's collection) and RM 2.37 million was collected on 30th December, 1994 (17% of December's collection) paid by 1,503 taxpayers. The same scenario had also been true in December, 1993.⁸⁰⁸ The rush to pay zakat dues before 1st January, 1995 was to ensure a rebate being allowed in the Y/A 1995 under the Income Tax Act. For that year, the rush had nothing to do with getting more rewards as promised by God since the commencement of the month of Ramadhan fell on 1st February, 1995. Though the PPZWP was successful in generating more revenue than previous systems of collection, it was not able to dictate the pattern of payment of its taxpayers, such as heavy payments in December, as it had no mechanism and provision to collect taxes by instalment. This was the advantage of the IRD over the PPZWP.

It appears that by early 1994 the proposal for payment of zakat through a salary scheme was still being studied by the Religious Affairs Division, PM's Department.

⁸⁰⁸PPZWP, Annual Report, 1994, pp. 31-33. Operational Activities of PPZWP in 1994 could be tabulated as follows:

Activity	Total
Talks	116
Assessment	629
Interviews	204
Seminar/briefing	6
Batched Collection (Kutipan kelompok)	70
Publicity via mosque/surau	156
Flyers/posters	31200
Circulation via periodicals Berita Baitulmal/We Care	6840
Zakat Operations	18
Attendances	15394

On 31/12/93, 2,590 Muslims paid their zakat dues. See "20 usahawan tidak bayar zakat di kesan", *UMA*, 6/1/94.

Though the scheme, which was opposed by PPZWP, was thought be able to relieve the ignorance (*kelalaian*) of the taxpayers in fulfilling their zakat dues and distributing the pattern of payments, the Deputy Minister in the PM's Department, Datuk Dr Abdul Hamid Othman, contended that there was no *nas* (evidence) in al-Qur'ān, nor in the ḥadīths, that addressed these issues. Furthermore, he reiterated, it is not necessary for a taxpayer to pay zakat personally in the traditional way, "shaking hand with the amil while uttering the 'akad". In quoting the case of Kuwait where the taxpayer could pay his zakat by telephone, by authorizing the Department of Zakat to deduct it from his GIRO-account, the Deputy Minister contended that under the current global electronic communication system, it would be sufficient to utter the "akad" by telephone or to pay zakat by uttering intention in one's heart, sending a letter stating intention to pay to the amil and enclosing payment, or authorizing the Baitulmal to deduct his liability from his bank account.⁸⁰⁹

Subsequently, the PPZWP's head-on collision with many of the Federal Government's initiatives appeared to put it in the losing end while the Federal Government's participation in the development of the privatized collection of zakat machinery was getting deeper, when the *Jabatan Akauntan Negara* (Accountant General's Department) approved a scheme where zakat deduction by government employees could be debited direct by the department without going through a mediatory body called the *Angkasa Management Bureau*.⁸¹⁰ As with previous innovative measures introduced by the Federal Government, though initially rejected by the PPZWP and MAIWP, they were eventually to reap the benefits.

The advent of 1995 was welcomed with a confident target of RM35 million in revenue for the PPZWP. However, its success, was significantly attributable to three

⁸⁰⁹"Bayaran zakat melalui potongan gaji masih dikaji", *BH*, 7/1/94.

⁸¹⁰PPZWP, Annual Report, 1994, p. 33.

factors:⁸¹¹

1. The IRD's launching of a periodical income tax deduction called the *Potongan Cukai Berjadual* (Scheduler Tax Deduction); monthly for salary earners and bi-monthly for businesses and corporations would be an acid test of the capability of Muslim taxpayers to satisfy their zakat liability.⁸¹²
2. The success of projects and programs of zakat disbursement which would be scrutinized closely by the public, and in connection with which the taxpayers satisfaction would significantly affect the generation of revenue.
3. Selangor's attempt to increase the efficiency of its zakat administration.

During its closing account for the period ending 31st December, 1995, PPZWP's fear became a reality when its revenue dropped to RM32.3 million from RM33.1 million in previous year whilst in 1994, the figure had been RM25.6 million.⁸¹³ PPZWP in a post mortem report found that the decrease in revenue was attributable to the following factors:⁸¹⁴

1. The stock market in the Kuala Lumpur Stock Exchange in 1995 was not bullish enough, resulting in massive losses to traders and investors with many Muslim players paying no zakat on their stocks.
2. As expected, the compulsory periodical income tax deduction imposed by the IRD in 1995 had resulted in an extra financial burden on the taxpayers
3. The proposal that the IRD would commence its extra duty as a federal amil with

⁸¹¹*Ibid.*, p. 33.

⁸¹²The system of "Schedular Income Tax Deduction (SITD)" was initiated in the West Malaysia. In Sabah and Sarawak, a "Pay as You Earn Scheme (PAYE)" had been in the system since the imposition of the income tax in Sabah and Sarawak. In the PAYE scheme, a taxpayer pays his tax on current drawn income whilst under the SITD scheme, he pays tax on his previous year's income. Initially, the IRD was contemplating introducing PAYE in West Malaysia but due to protests from the taxpayers who contended that they had to pay income tax twice in the same year (current and previous income tax liability), the PAYE scheme was abandoned indefinitely.

⁸¹³See footnote 300, 303

⁸¹⁴PPZWP, Annual Report, 1995, pp. 31-32. PPZWP in attempt to generate more revenues, tried to lure taxpayers on the basis that only payments made through the PPZWP would eligible to income tax rebate. See "Jelas zakat di PPZWP dapat rebat cukai", *UMA*, 9/12/95.

effect from 1996 had created confusion amongst taxpayers and many had postponed their zakat payment.

4. The reduction in the individual income tax rates as tabled in the 1996 Budget had reduced the amount of individual zakat payment.
5. The performance of the Baitulmal's disbursement programmes was not commensurate with the expectation of certain corporate taxpayers.⁸¹⁵
6. The use of the name *Pusat Pungutan Zakat* by the *Majlis Agama Islam Selangor* had resulted in confusion among the Federal Territory's taxpayers who thought the PPZWP was the same as the PPZ Selangor.

Though the PPZWP had aimed at a collection of RM35 million, it was modest in its projections subject to, among other things, the confirmation of the IRD's role in the collection of zakat and the bullishness of the stocks market.⁸¹⁶ Despite facing a shortfall in revenue generation, PPZWP was becoming aggressive in its marketing strategy when it started to expand its payment counters by appointing other commercial banks as its agent for collecting zakat on property in Selangor and the Federal Territory.⁸¹⁷

By 1996, the fifth year of its corporate operation, PPZWP had become a source of inspiration to other MAIN. During the previous year, though the PPZWP had embarked on at least six aggressive marketing programmes, such as specific articles published in newspapers, to motivate and increase the degree of awareness amongst Muslim taxpayers, statistics showed that in general the degree of understanding of zakat on property (*zakat harta*) had resulted in a poor collection. Though it was acknowledged

⁸¹⁵In 1995, it was estimated that only RM30 million out of gross collection of RM100 million generated from all the states was disbursed, suggesting that elements of inefficiency in the zakah administration still prevailed. The Parliamentary Secretary, Shafie Salleh, urged the religious authorities to allow professionals to administer the zakat system. See "Serahkan pengagihan wang zakat kepada professional", *UMA*, 28/12/95.

⁸¹⁶PPZWP, Annual Report, 1995, p. 32.

⁸¹⁷"BIMB ejen kutip zakat mulai 1 Nov.", *BH*, 26/10/95; PPZWP, Annual Report, 1995, pp. 31-32. In 1995, Bank Islam Malaysia Bhd signed a MoU with PPZ-MAIWP and PPZ-MAIS. Other commercial banks that had signed MoU with PPZWP were Maybank, Bank Pertanian and bank Simopanan Nasional.

that Kuala Lumpur had the highest concentration of successful corporations in the country, zakat generated from business profits was disappointing. The poor response from corporations was attributed to the following:

- i. The absence of a rebate to corporations under the Income Tax Act, 1967,
 - ii. Many corporations were in the form of limited companies which were answerable to shareholders. If a company wished to pay zakat, it must be agreed upon by a majority of its Board of Directors, some of whom might be non-Muslims members, and subsequently by shareholders at the company's EGM or AGM.
 - iii. Currently, there was no Muslim law stating that a company must pay zakat.
- Until the end of 1996, payment of zakat by a corporation was in the form of zakat from stocks (*zakat saham*) paid individually by the directors and its shareholders. Corporations that were running their daily operation according to Islamic law, such as the Pilgrim's Fund Board (LUTH) and the Islamic Bank, were the only corporate entities to pay zakat.⁸¹⁸

By middle of 1996, the system of disbursement employed by MAIWP was being questioned by certain quarters of the public who suggested a study be made to modernize the current system of disbursement. As a result of public representations, MAIWP decided to engage a consultant to conduct a study of the expectation of Muslims about

⁸¹⁸“Zakat: Tidak Banyak Golongan Korporat Menyumbang”, *Al-Islam*, October, 1996, pp. 26-30. Statement of Revenue generated by PPZWP in 1995:

Type of Collection	Collection \$ million
Zakat on Property (including zakat on Employment etc)	12.1
Zakat on Employment Income	8.9
Zakat on Saving	6.9

If the figure \$12.1 million is segregated from zakat employment, zakat employment contribution is the highest. This trend was also true for the revenue generated in the past five years.

how the system of disbursement should be handled, based on the eight asnaf.⁸¹⁹

⁸¹⁹It worth noting that the destitute and the poor are given the top priority in the disbursement of zakat collected. However, the main problem faced by the MAIWP was how to help the destitute and the poor. The Majlis was not keen to distribute the money to these groups that would eventually led to the formation of the syndrome "subsidy mentality". In a more drastic reformation, the Majlis had established a Pusat Latihan Kemahiran Baitulmal, an Institute pf Profesional Baitulmal, and were awarding scholarships to deserving students etc. These projects were working in tandem with the "Projek Pembangunan Rakyat Termiskin" launched by the Federal Government. See "Zakat: Tidak Banyak Golongan Korporat Menyumbang", *Al-Islam*, October, 1996, pp. 28-30.

PPZWP's Influence

Inception of Penang's PUZ MAIPP

The PPZWP's success story appeared to trigger a chain reaction with the establishment of similar collection mechanisms in other states. In 1994, Harta Suci Sdn Bhd in a joint effort with a computer company *Syarikat GC Kom* submitted a proposal to install computer hardware and software for the implementation of a similar zakat system for the *Majlis Agama Islam Johore* (MAIJ). A similar request was received from the *Majlis Agama Islam Kelantan* (MAIK) in January, 1994, followed by the *Majlis Agama Islam Pulau Pinang* on 6th May, 1994.

On 9th September, 1994, PPZWP's success gained the attention of the *Majlis Agama Islam, Penang* (MAIPP) when a Memorandum of Understanding (MoU) was signed between Harta Suci Sdn Bhd and the MAIPP, appointing Harta Suci Sdn Bhd as a consultant for the development of a zakat system similar to that used by the PPZWP. *Pusat Urus Zakat Majlis Agama Islam Pulau Pinang* (PUZ MAIPP) adopted PPZWP's computerized zakat system on 27th December, 1994 at a cost of RM400,000.⁸²⁰

Initially, PUZ MAIPP opened three payment centres, one at its headquarters in Taman Selat, Butterworth, and the other two located in Bukit Mertajam Complex and at Lebuhr Downing on Penang Island. The centers were fully computerized to ensure efficient collection of data.⁸²¹

⁸²⁰PPZWP, Annual Report, 1994, pp. 33, 53-54, 60; "3 pusat kutip zakat diwujudkan", *BH*, 10/9/94. On 29/5/94 PPZWP's operational manager, Haji Ismail Saad resigned to take up an offer by the MAIPP to setup a similar corporate vehicle to collect zakat in Penang. He was subsequently appointed general manager of the newly established "Pusat Urus Zakat MAIPP".

⁸²¹"Three zakat collection centres in Penang", *NST*, 10/9/94; "3 pusat kutip zakat diwujudkan", *BH*, 10/9/94. The state Financial Officer and also the PUZ Chairman, Dr Shahar Sidek, during the signing of the MoU with the PPZWP, announced that the collection of zakat in Penang would increase significantly. In 1993, the collection was RM3.2 million and in 1992 RM2.5 million. PUZ was confident that the collection in 1994 would be at least RM5.5 million.

Inception of Pusat Zakat Selangor (PZS) MAIS

By the end of 1977, though the total collection from zakat on property, savings and business had increased by 17% as compared to the previous year, zakat on property (*zakat harta*) still constituted the major portion of the revenue for the Majlis Agama Islam of Kelantan, Kedah, Perlis, Perak and Selangor. A significant percentage of zakat on property came from padi and beras. In 1977, Selangor's collection from zakat on saving and business had contributed \$48,414, compared to \$30,000 in 1976. It worth noting that by this time, no serious efforts to increase property zakat had been promulgated by any religious department. By the end of 1977, in an attempt to increase collection from property zakat, the Department of Religious Affairs Selangor (JUIS) started to become involved in business and manufacturing ventures in order to strengthen its financial viability, and had embarked upon promotion programs to all Muslim government servants in Selangor whose salaries were more than \$500 per month, despite the fact that JUIS knew that it might bear no positive result due to the fact that property zakat was deemed *zakat batin* (spiritual zakat) which could not be exacted through the process of law.⁸²²

Four years after PPZWP had been established successfully, Selangor followed suit. Though Selangor was accused of trying to establish the same corporate machinery as PPZWP, it claimed its measures was "innovating and not imitative". The *Pusat Zakat Selangor* (PZS) MAIS was established on 15th February, 1994, registered as a corporate entity titled *MAIS Zakat Sdn Bhd*, to regulate the collection of zakat and fitrah in Selangor. The company, wholly owned by MAIS, had a paid up capital of RM500,000. Its operation started in October, 1995 with eight staff with headquarters in Petaling Jaya. A year later, due to the tremendous responses from the public, the company moved to

⁸²²“Masalah Zakat harta--JUIS lancar berbagai kegiatan produktif”, *Al-Islam*, May, 1978, pp. 14-15. For instance, if a current account has an opening balance of \$5,000 and at the end of the year, there is a balance of \$2,500, the balance has satisfied the “hawl” and “nisab (current price of 25 carrat [mayam] and 2.7108 saga of gold)”, and is liable to zakat harta of 2.5% (1/40).

bigger premises in Shah Alam on 1st May, 1996.⁸²³

After a few months in operation, PPZ MAIS Selangor was very confident of future progress with the Chief Minister of Selangor projecting a collection of RM50 million in the year 2000 despite the fact that statistics had showed that only 5% of Muslim entrepreneurs paid their business zakat.⁸²⁴

From November, 1996, the company, initially registered as *Pusat Pungutan Zakat (PPZ) MAIS Selangor* changed its corporate name to *Pusat Zakat Selangor (PZS) MAIS* as part of its marketing strategy to demonstrate to the public that the collection and disbursement system were under the same administration. By the end of 1997, PZS MAIS had 56 staff. Besides having about 25 payment counters all over Selangor, PZS had embarked on extensive programs, including the payment of zakat through banking facilities. With an aggressive marketing strategy planned by PZS MAIS, revenue generated from zakat rose significantly by about 29% in 1994, 32.6% in 1995 and 80.5% in 1996.⁸²⁵ By 1996, the scope of taxation had been extended to almost every kind of

⁸²³“Selangor expects RM50m in tithes by 2000”, *NST*, 20/12/95; “Pusat Zakat Selangor--Membariskan tenaga muda”, *Al-Islam*, December, 1997, pp. 21-23.

⁸²⁴“MAIS jangka kutip zakat RM50 juta menjelang 2000”, *BH*, 20/12/95; “Selangor expects RM50m in tithes by 2000”, *NST*, 20/12/95; “Kutipan zakat diramal RM50 juta setahun”, *BH*, 20/12/95.

⁸²⁵“Selangor expects RM50m in tithes by 2000”, *NST*, 20/12/95; “Pusat Zakat Selangor--Membariskan tenaga muda”, *Al-Islam*, December, 1997, pp. 21-23. Statement of revenue generated in Selangor (1991-1996):

Year/Revenue (RM million)	Collection	Increase	% Increase
1991	6.3		
1992	7.7	1.4	22.2
1993	9.3	1.6	20.8
1994	12	2.7	29
1995	15.9	3.9	32.6
1996	28.7	12.8	80.5
Total	79.9		

zakat.⁸²⁶

Advent of a New Trend--Formation of Corporatised Collection Centers

In October, 1994, the *Majlis Agama Islam Pahang* (MAIP) and *Azakah (Pahang) Sdn Bhd* (AZSB) created its own corporate machinery called the *Pusat Pungutan Zakat Kuantan Sdn Bhd (PKZ Kuantan)*.⁸²⁷ However, on 12th December, 1995, a Memorandum of Understanding (MoU) to establish the *Pusat Pungutan Zakat Pahang Sdn Bhd (PKZ Pahang)*, a newly established privatized collection centre similar to the PPZWP, was signed between MAIP and *Azakah (Pahang) Sdn Bhd (AZSB)*, with MAIP holding 51% of the equity. By the end of 1995, MAIP was confident that PPZ Pahang would generate RM10 million of zakat revenues in 1996.⁸²⁸ During the signing of the MoU, MAIP once again made the headlines when it announced a new collection system

⁸²⁶“Pusat Zakat Selangor--Membariskan tenaga muda”, *Al-Islam*, December, 1997, p. 23.

Type of Zakat	Collection (RM million)	% Collection
Property	8947419	36.4
Employment	7864971	32
Business Profit	3985378	16.2
Savings	2629857	10.7
Shares	583047	2.4
Back Duty (Qada Zakat)	460041	1.9
Gold/Silver	81184	0.3
Others	49202	0.2
Total	24601097	

In Kuala Lumpur, PPZWP defines zakat on property to include zakat on employment, shares, saving on money, gold, and business. “Zakat: Tidak Banyak Golongan Korporat Menyumbang”, *Al-Islam*, October, 1996, p. 27.

⁸²⁷“Banyak syarikat tidak bayar zakat”, *Watan*, 27/11/95.

⁸²⁸“Zakat harta: MAIP jangka pungut RM10 juta tahun depan”, *UME*, 13/12/95. MAIP estimated that there were 750,000 Muslims in Pahang who were liable to zakat in 1995.

nicknamed *Kutipan zakat ala cukai pendapatan* (Collection of zakat cum income tax) which would be imposed on all liable Muslims in Pahang. Under this system, return forms would be issued to taxpayers, and failure or refusal to return the forms would subject taxpayers to a jail term of not more than six months or a penalty of not more than RM1,000 or both. Under the new system, however, the MAIP hesitated to impose these penalty provisions as it was not timely to do so.⁸²⁹

It seems that incorporation of zakat collection by MAIN had finally caught up when Trengganu, in 1994, quietly followed suit by establishing its own version called the *Pusat Pungutan Zakat PPZ*.⁸³⁰ On 6th June, 1995, the Majlis Agama Islam Malacca sent six of its officers to study the operation of PPZWP.⁸³¹ In January, 1996, Perak started to study the possibility of establishing a similar corporate vehicle to collect zakat, taking Pahang's PKZ and the Federal Territory's PPZWP as a model. The successful company would get 1/8 of the total collection.⁸³² In June, 1997, Perak announced that its *Jabatan Agama Islam Perak* (JAIP) had finalised a report to corporatise its collection of zakat; this would be launched in the following year. Nine more MAIN would corporatise their zakat collection divisions.⁸³³

⁸²⁹"Kutipan zakat ala cukai pendapatan di Pahang", *UME*, 12/12/95.

⁸³⁰"Dua didenda tidak bayar zakat", *BH*, 1/2/96.

⁸³¹PPZWP, Annual Report, 1995, p. 59.

⁸³²"Perak kaji swasta kutipan zakat", *Watan*, 4/1/96.

⁸³³"Urusan zakat 9 lagi negeri dikorporatkan", *BH*, 4/6/97; "Perak korporatkan sistem kutipan zakat", *BH*, 10/6/96. Apart from the Federal Territory, Selangor, Penang, Malacca and Pahang had successfully established their version of corporate machinery. The nine states are Johore, Trengganu, Kedah, Kelantan, Perlis, Perak, Negeri Sembilan, Sabah and Sarawak.

Expansion of the Zakat Collection Centers--Advent of Electronic Banking

The year 1996 saw the development and modernization of zakat collection take another quantum leap when the aggressive efforts of MAINs to sign MoUs independently with financial institutions marked a turning point towards acceptance of some sort of a centralized collection agency. Though PPWP and PPZ Selangor in principle fully supported the establishment of a Central Zakat Fund (LUZAM), both signed MoUs with the Malayan Banking Berhad in November, 1995, the Bank Bumiputra Malaysia Berhad (BBMB) in January 1996, with BBMB appointed as agent and providing collection counters for both zakat collection centers.⁸³⁴

In April 1996, the Amanah Saham Nasional Berhad (ASNB) which handled both the Amanah Saham Nasional (National Stock Trust) and the Amanah Saham Bumiputra (Bumiputra Stock Trust), investment instruments of the Government, announced that zakat deduction at source for dividend distributions accruing to Muslim depositors would be possible with effect from June, though this was delayed until the ASNB detailed approval from the Inland Revenue Board (IRB) pertaining to the rebate on zakat payment, and from Pusat Islam. Under the scheme, zakat generated from deductions at source, based on the current price of gold as specified by MAINs, would be disbursed to MAINs based on addresses of investors available in the ASNB's database. With 4.3 million investors in ASB, with investments valued at RM23 billion, and 1.3 million investors with investments in ASN valued at RM600 million, ASNB felt that the contribution from taxpayers affected would be significant for the development of zakat administration.⁸³⁵

In June 1996, equipped with 589 ATM in 480 branches, the Bank Simpanan Nasional (BSN) signed MoUs with MAIS, MAIWP and MAIJ to become collection

⁸³⁴"Pusat perlu bantu negeri pungut zakat", *BH*, 23/1/96; "Korporat sumbang RM2.4j zakat", *Harian Metro*, 20/4/96; "Bayar zakat melalui Maybank", *UMA*, 1/1/95.

⁸³⁵"ASNB permudah bayaran zakat", *BH*, 19/4/96; "Sistem bayaran zakat ASN, ASB di perkenal", *UME*, 22/4/96; "ASN, ASB memperkenalkan sistem pembayaran zakat", *UMA*, 22/4/96..

agents and reaffirmed its readiness to do the same for other MAIN if requested. Confident of its extensive computer network, BSN would provide services with respect to payment of zakat from savings, employment income, business, stocks, and zakat due from the Employees Provident Fund (EPF).⁸³⁶

In September 1996, the Arab-Malaysian Bank Bhd (AmBank) in conjunction with the signing of an MoU with the PPZWP announced that holders of AmBank Al-Tasrif Visa credit cards based on Islamic principles could pay their zakat using the credit card at PPZWP counters. With this facility, Muslim taxpayers could pay their zakah by installments.⁸³⁷ In late September the same year, Malayan Banking Berhad (Maybank) signed a MoU with the *Majlis Agama Islam Negeri Sembilan* (MAINS) with similar services offered by the BSN. By this time the Maybank already had counter services for zakat in Selangor and the Federal Territory. Maybank pledged that it would extend the facilities nationwide⁸³⁸ By the end of 1996, it appears that some of the MAINs had agreed indirectly to the idea of a centralized collection agency while controlling the disbursement aspects of zakat. However, the attempt by the ASNB to disburse zakat deducted at source appeared to get the consent of MAINs when it proposed to disburse the collection based on the address of the taxpayers. However, the formula was rejected by various MAINs, especially those from wealthy states.

⁸³⁶"Zakat: BSN sedia perluas khidmat", *BH*, 11/6/96; "BSN ajen kutipan zakat", *Harian Metro*, 11/6/96.

⁸³⁷"Bayar zakat melalui Visa Islam AmBank", *UMA*, 20/9/96. According to AmBank, the Visa card operates based on the Islamic principle called the *Al-Bai Bi-thaman Ajil*. Cf., "Arab-Malaysia meterai MoU PPZ", *Watan*, 20/9/96; "AmBank, PPZ meterai MoU", *BH*, 20/9/96.

⁸³⁸"Zakat boleh dibayar menerusi bank", *BH*, 28/9/96; "Maybank luaskan khidmat kutip zakat", *UMA*, 28/9/96.

Formative Decade: Federalization of Zakat Disbursement

Background

The basic principles which govern the disbursement of revenue are clearly as stipulated in the Qur'ān and Hadith.⁸³⁹ All zakat properties must be disbursed in accordance to the eight *aṣnāf*, namely, the Fakir, Miskin, amil, Muallaf, Gharim, al-Riqab, Fisabilillah and Ibn Sabil. As discussed in Chapter 4, in practice in some states, disbursement was made only to available *asnaf* on the premise that certain *asnaf*, such as slaves, no longer existed.⁸⁴⁰ Upon close analysis, the system of disbursement practiced in various Malay states was not standardized and was not given in equal portions to each available *asnaf*. In some cases, a certain percentage of the revenue generated was kept in a consolidated fund and left to accumulate as the years went by. This was the case in Johore, Malacca and Trengganu for its financial year 1975, as well as in some other states:⁸⁴¹

Asnaf	Johore	Malacca	Trengganu
Destitute	221167	54367	83250
Poor	220794	56190	83250
Amil	222458	56428	83250

⁸³⁹Qur'ān (at-Taubah, verse 60), "Alms are for the poor. And the needy, and those employed to administer the (funds); For those who hearts have been (recently) reconciled (to truth); for those in bondage, and in debt; in the cause of God; and for the wayfarer. (Thus is it) ordained by God; And God is full of knowledge and wisdom". According to Abdullah Yusuf Ali's interpretation, the "needy", besides the ordinary indigent, are those mentioned in the Qur'ān as 1) men who have been weaned from hostility to Truth, who would probably be persecuted by their former associates, and require assistance until they establish new connections in their new environment, 2) those in bondage, literally and figuratively; captives of war, must be redeemed; slaves should be helped to freedom; those in the bondage of ignorance or superstition or unfavourable environment should be helped to freedom to develop their own gifts; 3) those are in the grip of debt should be helped to economic freedom; 4) those who are struggling and striving in God's Cause by teaching or fighting or in duties assigned to them by the righteous Imām, who are thus unable to earn their ordinary living; and 5) strangers stranded on the way. All these have a claim to charity. They should be relieved by individual or organised effort, but in a responsible way. Abdullah Yusuf Ali, *The Holy Qur'ān*, (Islamic Propagation Centre International, Birmingham, n.d.) p. 458.

⁸⁴⁰See Chapter 4; "Collection of Working Papers presented during "Perjumpaan Pegawai-pegawai Zakat/Baitul Mal, Jabatan Ugama Islam Negeri-negeri, 1977/1397, organised jointly by the Majlis Ugama Islam Wilayah Persekutuan, Prime Minister Department, Kuala Lumpur, p. 6.

⁸⁴¹*Ibid.*, pp. 6-7.

Muallaf	187505	960	83250
Gharim	336879	300	83250
al-Riqab	-	-	83250
Fisabilillah	-	-	83250
Ibn Sabil	-	-	83250

As these figures show, only Trengganu disbursed the collection in equal portions to all asnaf. In some states, any excess, after the disbursement had been exhausted, would be deposited into an investment account and Baitulmal. The money would then be invested in business ventures for purchase of stocks, property for rental, land for housing development and in other ways intended to bring in good returns.⁸⁴²

⁸⁴²*Ibid.*, p. 7.

Inception of the Zakat Management Board of Malaysia (LUZAM)

The idea of a federalized zakat management body to be known as *Lembaga Urusan Zakat Malaysia* (LUZAM) as a federal disbursement agency had been discussed since 1993 though a similar machinery had been mooted since 1968.

At this point, it was suggested that the Majlis should be pro-active in order for the establishment of a professional corporate body equipped with efficient administration, operation and marketing, and supported by a complete database of Muslim taxpayers could be realized. It was contended that suggestions from the Federal Government and *Pusat Islam* fell on deaf ears; the Constitution was made the scapegoat, resulting in the interest (maṣlaḥah) of the ummah being neglected. It appears that the development of a LUZAM had been hampered to maintain the status quo enjoyed by respective states. For the past five years, numerous suggestions by various organisations and Federal agencies were rebutted by the MAIN in respective states on the ground that *soal negeri dan pusat tidak perlu campur tangan* (matters involving the states and the Federal should not be intermingled).⁸⁴³ In reality, the Federal Government has no jurisdiction over religious matters in Peninsular Malaysia except for the Federal Territories of Kuala Lumpur and Labuan, Penang and Malacca which do not have hereditary Malay rulers. Though by 1988, the *Majlis Hal Ehwal Agama Islam Malaysia* (Malaysian Federal Council for Religious Affairs) had been established to coordinate and suggest some form of uniformity and standardisation with respect to religious administration, though its functions still remain purely advisory in nature.⁸⁴⁴

⁸⁴³“Zakat: Tidak Banyak Golongan Korporat Menyumbang”, *Al-Islam*, October, 1996, pp. 29-30.

⁸⁴⁴Section 3(Religion of the Federation), *Federal Constitution of Malaysia*, p. 2; "Domestic Resource Mobilisation: The Role of Zakat and Baitulmal in the Socio-Economic Betterment of the Muslims in Malaysia", Abdul Aziz Muhamad, *Ceramah Bersiri INTAN 3/88*, Kuala Lumpur, 18/6/88, pp. 6-7. Abdul Aziz Muhamad argued that the Federal Government should not, as far as zakat is concerned, be directly involved in the administrative processes of zakat. He further contended that since the Federal Government is committed to eradicate poverty and to reduce inequality of incomes, it is proper that the Federal Government play a more active role in assisting the upgrading of the existing zakat administrative mechanism. Cf., footnote 819

In January, 1994, the Deputy Minister in the PM's Department announced that under the proposed LUZAM, a 2.5% zakat tax on employment income would generate revenues of at least RM250 million.⁸⁴⁵ As a result of the policy concerning cooperation of the IRD and the state MAINs promulgated by the Federal Government at the time of the 1993 Budget, a committee chaired by the Deputy Minister in the PM's Department, Datuk Dr Abdul Hamid Othman, and consisting of law experts and government officers from various agencies, was established in July, 1993 to formulate a policy leading to a more efficiently administered corporate vehicle.⁸⁴⁶ During the Parliamentary debates in April, the Government reiterated that the proposed Zakat Act would cover not only zakat padi, but also zakat from business and stock market transactions. The proposed Act would eliminate the existence of bias against padi cultivators and would also eliminate the questionable disbursement of payment of zakat to *pondok* teachers by individual taxpayers.⁸⁴⁷

It worth noting that aside from the problem of accumulated zakat and fitrah funds deposited in the commercial banks without investment in viable projects, no study had been undertaken prior to 1994 on the economic and social implications to beneficiaries of the zakat and fitrah fund. Realizing this, the Minister of Public Utilities who was also the chairman of MAIWP, Dato' Dr. Mohd Mohd Noor suggested in January, 1994, as a starting point, a study of the economic and social implications of zakat in relation to *muallaf* (Muslim converts) would be initiated."⁸⁴⁸

⁸⁴⁵See projection paper by the IRD, n.d..

⁸⁴⁶"Kutipan zakat dijangkakan RM250 juta", *BH*, 29/1/94.

⁸⁴⁷"Kanun zakat negeri digubal", *UMA*, 14/4/94. The government reiterated that by this time the weaknesses of the current system had been identified: unsystematic collection procedures, shortages of staff and officers with proper training, lack of awareness among Muslims, and no incentives to corporate taxpayers to pay zakat.

⁸⁴⁸"Kajian kesan zakat ke atas muallaf perlu di jalankan", *UMA*, 7/1/94; "Majlis Agama selaras agihan zakat", *BH*, 19/1/94. In January, 1994, the MAIWP, in a press statement, announced that a study would be conducted on muallaf in the Federal Territory. Statistics had shown that a majority of Muslim converts were from those with tertiary education, professionals and the wealthy. Based on this, the current system of disbursement of zakat and fitrah fund should be normalized to commensurate with the social, not

By early 1994, it appears that in conjunction with the proposed Akta Zakat, a federal body Yayasan Zakat Kebangsaan (Central Zakat Foundation) to standardize the collection machinery for all states, was being considered by the Finance Ministry. It was not clear in which direction the Federal Government was heading at that time. However, the development of LUZAM with the IRD in its train was naturally not welcomed by the PPZWP. By this time, confident with its massive revenues, MAIWP, in an attempt to promote PPZWP as a model for the federalization of zakat collection, announced that it might be able undertake the tasks proposed for LUZAM and to disburse part of its revenue from zakat and fitrah to eligible beneficiaries outside of the Klang Valley but resident in Kuala Lumpur.⁸⁴⁹

In November, 1994, despite knowing that the IRD would be the favourite federal agency to be the federal amil operating in tandem with the proposed LUZAM, PPZWP in an aggressive marketing drive tried to alter the course of developments by submitting a draft proposal to the Ministry of Finance that, in view of its expertise and resources, PPZWP should act as coordinator of the proposed Central Zakat Foundation. On the other hand, PPZWP was determined to retain its role as federal amil, announcing in a press statement noting the acceptance of zakat payments from five Muslim companies,⁸⁵⁰

financial needs of these converts.

⁸⁴⁹"Kutipan zakat WP di agihkan ke negeri lain", newspaper article (no date) in PPZWP, Annual Report, 1994, p. 68.

⁸⁵⁰"PPZ bersedia jadi penyelaras Yayasan Zakat", *UMA*, 6/11/94. Payment of zakat by the five companies on behalf of their depositors could be tabulated as follows;

Payers	Zakat Paid
LUTH of the Federal Territory	1160050.18
Koperasi MOCCIS	1000000
Tabung Ittikal Arab-Malaysian	618030.92
Kooperasi KOSWIP	119902.71
Koperasi Pegawai Melayu Jabatan Pertanian Berhad	15183.04

It worth noting that under current practices, companies like LUTH with branches all over Malaysia, payment of zakat by each branch was made in the respective state. PPZWP's suggestion that LUTH

that payment of zakat from outside the Federal Territory would be accepted by the PPZWP, a marketing drive targeted to Muslim companies with branches in other states. PPZWP's justification for its expansionist policy was the fact that the destitute and the poor in the Federal Territory were immigrants from other states who came on a temporary basis, creating unwanted social problems in the Federal Territory.⁸⁵¹

The Federal Government in numerous previous press statements and seminars was subtle in its canvassing of its proposed federalization projects (Zakat Act, LUZAM, and the IRD as *amil*) as solutions for the ailing the zakat system. In November, 1994, the Federal Government claimed that its proposals would not jeopardize the powers of the Malay sultans. By this time it was clear that the Federal Government intended to control all financial aspects of religious administration when, in an attempt to get the cooperation of the MAIN to the proposed Federal collection agency, the Chairman of the UMNO's Religious Affairs Bureau, Dato' Dr. Mohd Mohd Noor stated that the a Baitulmal Negara (National Baitulmal)" consisting of representatives from the MAIN would be able to administer efficiently all waqf properties belonging to the MAIN, thereby guaranteeing that the existing legislative powers of the Malay sultans would not be affected.⁸⁵² At about the same time, the Federal Government's efforts were supported politically when the Liaison Division of UMNO Selangor (Badan Perhubungan UMNO)

headquarters in Kuala Lumpur pay a consolidated zakat due in the Federal territory would naturally be unacceptable to the states, which could not allow the diminution of its revenues. For instance, LUTH Perak, in a grand ceremony organised by the Majlis Agama Islam Perak attended by the Sultan of Perak, paid business zakat RM417,775.75 on behalf of its depositors in Perak state. See "Zakat Tabung Haji di Perak meningkat", *Watan*, 28/12/95; "Zakat Pendapatan Perniagaan Tabung Haji Meningkat", *UME*, 28/12/95.

⁸⁵¹"PPZ bersedia jadi penyelaras Yayasan Zakat", *UMA*, 6/11/94; "Menubuh Yayasan Zakat Negara", *UMA*, 11/11/94.

⁸⁵²"Baitulmal Negara mampu urus kutipan zakat", *BH*, 22/11/94. As discussed in Chapter 2, the powers of the Malay sultans were compromised when the British Administration took over the revenue system of the Malay Sultanate and in return the members of the Malay Sultanate were given pensions and small roles in government. What was left was managing Islam and Malay custom. The Federal Government's attempt to federalise the collection and disbursement of zakat is comparable to that of the British Colonial Administration against which in a way, the administration of religious fiscal policy by the states was the last defense.

in its AGM suggested the establishment of a Ministry of Zakat and Waqf.⁸⁵³

By the end of 1995, it appears that the PPZWP had finally softened its stand when it acknowledged the proposed establishment of LUZAM and the creation of a consolidated Central Zakat Fund. The Chairman of PPWZWP also suggested that large zakat collection from one state might be disbursed to states with smaller collection but more destitute and poor.⁸⁵⁴ But as far as is ascertainable, the paper on “cross-boundary disbursement” rejected by Ulama Congress in 1968 had not yet been accepted.

By late 1995, the crystallization of LUZAM was far from settled. The MAINs were still tight lipped despite numerous proposals publicly disclosed in the mass media. While it looked as though the process of federalization was going to be deadlocked, the Federal Government in a surprise move announced that a standardized enactment to exact zakat dues statutorily was ready to be implemented and agreed upon by all Majlis Ugama Islam Negeri though not yet be made law in the states. The enactment provided for penalties for non-payment of zakat by members of the business community. The proposed enactment, which was to be implemented simultaneously in all states, would cover every aspect of financial related businesses and corporations. At the same time to facilitate the birth of the new federalized enactment, a National Zakat Collection Centre would be established to disseminate information on the need to pay zakat and facilitate payment.⁸⁵⁵

⁸⁵³Editorial, “Kaji penubuhan Kementerian Zakat dan Wakaf”, *Harian Watan*, 21/11/94. Statistics had shown that 3153 hectares (315,200,000 square metres) of waqf lands in Malaysia were not being developed professionally and economically due to the restrictions imposed by certain authorities. For a short account of the Ministry of Waqf and Religious Affairs, and the Department of Zakat, Kuwait, see p. 275.

⁸⁵⁴PPZWP, Annual Report, 1995, p. 2.

⁸⁵⁵“Undang-undang bayar zakat siap”, “Tabung zakat Negara ditubuhkan”, *Watan*, 17/11/95; “Enakmen wajibkan syarikat bayar zakat”, *UMA*, 17/11/95; “Mandatory zakat payment by Muslim companies”, *NST*, 17/11/95; “Kerajaan mahu pinda enakmen zakat”, *BH*, 20/12/95. In 1994, total collection for all states was RM120 million only. See “Kutipan zakat belum memuaskan”, *UMA*, 13/6/95.

By the end of 1995, despite support from the Malay Business Council (Dewan Perniagaan Melayu Malaysia) and aggressive media coverage from influential Malay newspapers, concerning the nation-wide imposition of business zakat, including the option of paying zakat using certain commercial bank facilities, the responses from Muslim corporations (except established deposit-taking corporations)⁸⁵⁶ and entrepreneurs, were very poor and extremely disappointing. In Selangor, by the end of 1995, only 5% of Muslim entrepreneurs had paid their business zakat and about 20% in the Federal Territory whilst in Pahang, the same disappointing scenario was reported by

⁸⁵⁶"Enakmen wajibkan syarikat bayar zakat", *UMA*, 17/11/95; "Zakat perniagaan akan diwajibkan", *UME*, 17/11/95; "Mandatory zakat payment by Muslim companies", *NST*, 17/11/95; "Undang-undang bayar zakat siap", *Watan*, 17/11/95; "Zakat perniagaan akan diwajibkan", *BH*, 17/11/95; "Syarikat bayar zakat dialu-alu", *UMA*, 18/11/95; "Tabung zakat negara ditubuhkan", *Watan*, 17/11/95. Until this time, Muslim corporations and Cooperatives paid business zakat on behalf of their depositors. Business zakat paid at the end of 1995 for the Federal Territory could be tabulated as follows:

Deposit -Taking Entity	Business Zakat Paid
LUTH (Federal Territory Kuala Lumpur)	1111691.74
Tabung Ittikal Arab Malaysian	433055.91
Koperasi Pegawai Melayu	378000
Bank Islam	275713.26
Urus Bangunan Sdn Bhd	193380.61
Syarikat Takaful (M) Sdn Bhd	138605.6
Koperasi kakitangan Institut Teknologi Mara Bhd	77766.75
Koperasi kakitangan Petronas Bhd	28678.4
Koperasi Pegawai Melayu Jabatan Pertanian	22766.05
Koperasi Pegawai-pegawai Negeri Selangor & K.L	19906.95
Koperasi Pasar Raya (M) Bhd	15133.04
Koop Ladang Pekebun Kecil (M) Bhd	12532
Koop kakitangan FELDA Bhd	10000
Total Collected	2717230.31

the privatized *Pusat Pungutan Zakat Pahang*.⁸⁵⁷

Under the proposed Enactment, which would be operative from 1996, business zakat would be decentralized and collected at the state level by the same religious authorities, whilst under the centralized LUZAM-IRD proposed mechanism, the IRD would be a federal amil and LUZAM would disburse the revenues to all states on an agreed formula.⁸⁵⁸

In this respect the Federal Government with the support of the media had aggressively tried to put forward the notion that only through an efficient collection system such that operated by the Employees Provident Funds (EPF) and the IRD, and with a high degree of awareness among the Muslims would the collection of business zakat be successful.⁸⁵⁹ After years of delay in bringing about a federalized zakat administration, the Federal Government saw the formulation of the *Enakmen Pungutan Zakat* (Collection of Zakat Enactment) as a means of enforcement of a unified enactment which would eventually be replaced by the proposed Zakat Act, under which LUZAM would operate. At about the same time, perhaps confident of the success of the proposed *Enakmen Pungutan Zakat*, the Federal Government announced that it would establish a *Tabung Zakat Negara* (National Zakat Fund) to facilitate the collection of business zakat from corporate organizations and business entities all over the country.⁸⁶⁰

As discussed above, the new enactment, targeted at wealthy Muslim companies would risk failure as the main issues had not been resolved. There was no incentive to

⁸⁵⁷“MAIS jangka kutip zakat RM50 juta menjelang 2000”, *BH*, 20/12/95; “Selangor expects RM50m in tithes by 2000”, *NST*, 20/12/95; “Kutipan zakat diramal RM50 juta setahun”, *BH*, 20/12/95; “Banyak syarikat tidak bayar zakat”, *Watan*, 27/11/95; “Enakmen Pungutan Zakat kukuhkan ekonomi”, *BH*, 24/11/95.

⁸⁵⁸ See Chart 5.1

⁸⁵⁹“Zakat menggerak kesedaran ummah”, *BH*, 18/11/95.

⁸⁶⁰“Tabung zakat negara ditubuhkan”, *Watan*, 17/11/95.

corporations to pay zakat, for payment of zakat by a corporation was not allowed as a rebate under the Income Tax Act but only as an expenditure.⁸⁶¹ In Pakistan, by comparison, under the Zakat and Ushr Ordinance, 1980, various tax incentives were given to taxpayers paying other secular taxes. The amount paid to Zakat Fund was deducted from the taxable income of the person. No wealth tax was levied on assets or wealth on which zakat had been paid. No *Malia* (land revenue) was levied on the land or on the produce on which Ushr had been collected.⁸⁶² In Sudan, though its development of zakat system was lagged behind that of Malaysia, a federalized Zakat Law and a Ministry of Zakat had been in existence since 1984.⁸⁶³ Despite the involvement of the Ministry of Finance, the IRD and various Federal agencies from the beginning of the LUZAM-IRD proposal, the plight of Muslim corporations and entrepreneurs, not to mention corporations with non-Muslims as shareholders, had not been successfully addressed.

It would appear that by the end of 1995, the concept of business zakat and rebate was still not fully understood by either the religious authorities and, in general, by the Muslim business community. Instead of demanding from the Federal Government that the treatment of payment of compulsory zakat as a tax payment under the Income Tax Act, as proposed in the resolutions passed at the meeting between the *Zakat/Baitul Mal* and *Jabatan Ugama Islam Negeri-negeri* in 1977,⁸⁶⁴ the *Pusat Kutipan Zakat Pahang* (PKZ Pahang) pressed in November, 1995 for the rebate to be applied to the payment of business zakat. It was because of the lack of rebate that Muslim companies and

⁸⁶¹Seminar paper, "kearah perlaksanaan zakat pengajian dan pendapatan di Wilayah persekutuan, dan Penyelarasan Pengiraan zakat perniagaan di Wilayah Persekutuan", Persatuan Kebajikan Islam Jabatan Hasil Dalam Negeri (PERKIS), Kuala Lumpur, November, 1986) pp. 5-6.

⁸⁶²*Introduction of Zakat in Pakistan*, (Council of Islamic Ideology, Islamabad, n.d)

⁸⁶³"Sudan minat cara kutipan zakat negara", *UMA*, 18/11/95.

⁸⁶⁴See Working Papers presented during "Perjumpaan Pegawai-pegawai Zakat/Baitulmal, Jabatan Ugama Islam Negeri-negeri, 1977/1397", organised jointly by the Majlis Ugama Islam Wilayah Persekutuan, PM's Department, Kuala Lumpur, pp. 44-47. See also above p. 274 for a detailed account of the resolutions passed in that meeting.

entrepreneurs were unwilling to pay business zakat.⁸⁶⁵

In early 1996, the proposed *Enakmen Pungutan Zakat* became the main event when the Federal Government announced that the new enactment, currently being scrutinized from various aspects, would be enforced in the Federal Territory. When enforced, the law, which would not only cover zakat on income but also on properties, businesses, shares/stocks, gold and silver jewelry, would be able to generate revenue as high as RM80 million in the Federal Territory and close to RM400 million nationwide if the enactment were accepted by all states. At the outset, as the government expected, the proposal, given so much media coverage, had aroused a great deal of interest among the general public, academicians and various non-profit organizations, particularly the Yayasan Pembangunan Ekonomi Malaysia (YPEIM) which contended that the effort by the government would have tremendous positive effects on the development of *da'wah*.⁸⁶⁶ At this juncture, there were mixed reactions as to the proposal. Some sections of the public viewed with concern the disparity faced by Muslim taxpayers in cases where zakat liability was more than income tax liability. It was argued that if the zakat law was enforced in all states, it would place an additional burden on Muslims *vis-a-vis* non-Muslims which could be a negative factor in fostering a Bumiputra entrepreneur community.⁸⁶⁷

⁸⁶⁵"Zakat perniagaan diminta rebat cukai JHDN", *Mingguan Malaysia*, 19/11/95.

⁸⁶⁶"Muslim gagal bayar zakat didakwa", *BH*, 31/1/96; "Zakat harta: Strategi disusun", *UMA*, 31/1/96; "FT to draft law on zakat", *Business Times*, 31/1/96; "Pastikan pungutan berkesan", *BH*, 1/2/96; "Gubal undang-undang wajib zakat", *watan*, 31/1/96; "RM400m in zakat yearly with new ruling", *The Sun*, 31/1/96; "Undang-undang mewajibkan umat Islam bayar zakat harta sedang disemak", *UME*, 31/1/96; "Cadangan wajib bayar zakat harta disokong", *BH*, 17/10/96; "Cadangan wajib bayar zakat harta", *BH*, 16/10/96; "Semua jenis zakat akan diwajibkan", *UME*, 16/10/96; "Making zakat collection compulsory", *NST*, 16/10/96; "Pindaan wajibkan zakat", *UMA*, 16/10/96. In early 1996, Jabatan Hal Ehwal Agama Trengganu (JHEAT) announced that they would enforce section 213 Enakmen Pentadbiran Hal-Ehwal Agama Islam Trengganu, 1986. So far two Muslim entrepreneurs had been fined RM3,000 in the Shari'ah Court for non-payment of zakat. The department was willing to work with the IRD in locating liable Muslim entrepreneurs who had not paid their zakat. See "JHEAT kesan usahawan lari bayar zakat", *Metro Ahad*, 4/2/96; "Dua didenda tidak bayar zakat", *BH*, 1/2/96.

⁸⁶⁷"Zakat must not be a burden", *NST*, 5/5/96.

In early 1996, about three years after the proposal to establish a National Zakat Authority (latterly known as LUZAM) had been tabled in the 1993 Budget, the Majlis Agama Islam Selangor (MAIS) and PPZWP, in a press statement, finally accepted the urgency of establishing LUZAM as the only viable corporate machinery which could disburse zakat to the destitute and the poor across state boundaries. There is no doubt that the PPZWP and MAIS had played a vital role in the delay of LUZAM. Their aggressiveness in trying to increase their tax bases through MoUs and aggressive marketing had single handedly influenced other states to establish their own corporate vehicles to collect zakat, hindering further attempts to centralize the collection and disbursement of zakat. By October, 1996, the attitude of states religious authorities continued to be a major obstacle, despite much favourable public opinion from academicians and Islamic organizations, and meetings between Federal and state governments. The Federal Government finally admitted that it had exhausted all avenues in dealing with the states religious authorities when, in response to a question by a journalist about the delay in the implementation of individual zakat collection through income tax deduction, the Minister in the PM's Department, said, "I'm not sure when it can be done because zakat is legally a state matter. We are still working on it".⁸⁶⁸

As a result of Baitulmal WP RM2 million losses from investments in a public listed company, *Petronas Dagangan*, in February, 1994, the urgency of establishing LUZAM became more evident. This event given wide coverage by the media and politicians, was a fatal blow to public confidence. Some proposed that MAINs should published yearly statements of zakat collection and disbursement in the newspapers to

⁸⁶⁸"Special agency to collect zakat from firms", *The Sun*, 16/10/96; "Kerajaan dicadang tubuh tabung zakat Malaysia", *UMA*, 3/1/96; "Pungutan zakat cekap tingkat kutipan", *BH*, 5/1/96; "Pusat perlu bantu negeri pungut zakat", *BH*, 23/1/96; "MAIS sokong tubuh TZM", *UMA*, 4/1/96; "Sistem zakat ikut tuntutan zaman", *UMA*, 27/8/96; "Zakat: Muhammad syor bentuk badan nasional", *BH*, 25/5/96; "Selangor syor badan zakat kebangsaan", *UMA*, 25/5/96; "Sistem agihan zakat majukan sosioekonomi", *UMA*, 6/6/96.

stop any allegations or misgivings.⁸⁶⁹ PPZWP and MAIWP were quick to rebut these allegations, with PPZWP arguing that part of the problem could be attributed to the corruption of staff. PPZWP contended that this problem was caused by the transfer of problematic staff to the Religious Affairs Department as a dumping ground so that they could be rehabilitated when, in fact, they should have been fired by the Public Services Department.⁸⁷⁰

In the face of these doubts, some corporate bodies in the Federal Territory had gone to the extent of channeling their zakah contributions directly to the eligible recipients on the advice of a mufti and the fatwa committee which were of the opinion that zakat funds cannot be invested.⁸⁷¹ To make thing worst, it was publicly known that the Baitulmal WP's had some sort of indiscreet collaboration with the PPZWP and had been actively investing its excess revenues in the stock markets despite the Baitulmal Committee's policy that excess revenues could only be invested upon approval of the mufti, Committee members and the Fatwa Committee.⁸⁷² In view of the huge surplus in the Baitulmal WP consolidated account, the Press, in its review of the weaknesses in the country's zakat institution stressed that it was imperative that LUZAM be

⁸⁶⁹In the Federal Territory, all revenues were deposited in the Baitulmal consolidated account and the disbursement policy was governed by the Baitulmal Committee. Disbursement programmes were run by several bodies such as the Baitulmal, Baitulmal Professional Institute, Women's Shelter Centre and the Amar Maarof division of JAWI, and Islamic welfare bodies. See "Making zakat funds more transparent", *NST*, 5/3/96; "Pengagihan wang zakat: Apakah sampai kesasarannya?", *Watan*, 4/3/96. In another case reported in an anonymous state, due to the efficiency of the accounting system, RM 180,000 was embezzled from the Zakat Fund by a Zakat Officer. See "Sistem pengurusan zakat tidak berkesan", *BH*, 12/9/97.

⁸⁷⁰"Making zakat funds more transparent", *NST*, 5/3/96; "Institusi pengurusan zakat perlu telus", *UME*, 11/6/96; "Institusi zakat perlu telus", *Watan*, 11/6/96; "Transparency a must in zakat affairs", *The Star*, 11/6/96; "Institusi zakat perlu telus", *UMA*, 11/6/96; "Agencies collecting zakat told to be transparent", *NST*, 11/6/96; "Transparency in zakat management favoured", *Business Times*, 11/6/96; "Be transparent, zakat agencies told", *The Sun*, 11/6/96; "Pengagihan wang zakat", *UMA*, 6/3/96.

⁸⁷¹"Zakat financial reports welcomed", *The Sun*, 6/3/96. This fatwa was issued by the Shari'ah Law Administration of the Federal Territory Islamic Religious Affairs Department (JAWI) and in consonant with the view of the Selangor Islamic Religious Council (MAIS).

⁸⁷²"Masih kabur dengan pengagihan zakat", *UMA*, 16/3/96. Under normal practice, MAIWP only invest in government-backed financial institutions, and not in the open stock markets.

established so that zakat could be evenly distributed to all the states.⁸⁷³

As discussed above, political statements pertaining to the inception of the long-awaited innovation “payment of zakat through deduction by the IRB” had been the media’s standard “Press Statement” whenever payments of business zakat by Muslim-owned corporations and Cooperatives were given much hype and publicity, but the Inland Revenue Board (IRB)⁸⁷⁴ was cautious in its ability to conform to the politician stunt. By May 1996, IRB’s retiring Director General said that the IRB was ever ready to discharge its duty as the system’s implementer. However, he cautioned that it would be impossible for the IRB to launch such a massive project, as important issues pertaining to the IRB, such as a fatwa concerning the IRB as an *amil*, had not yet been finalized.⁸⁷⁵

By the end of 1996, compounding public representations with extensive media coverage toward the system of disbursement of zakat funds had obviously been a blessing in disguise to the establishment of LUZAM. The opportunity to ratify LUZAM’s position was quickly grabbed by the Minister in the PM’s Department, Datuk Dr Abdul Hamid Othman, when he announced that automatic tithe deduction scheme would be enforced soon by the IRB after minor adjustments.⁸⁷⁶ However, by the end of 1997, LUZAM was still a political agenda pending a fatwa from the *Muzakarah Jawatankuasa Fatwa* (Conference of the Fatwa Committee) working in tandem with the

⁸⁷³“A case of fair zakat distribution”, *The Sun*, 10/3/96; Editor’s column, “Zakat: masih ada kelemahan”, *UMA*, 8/3/96; “Sistem agih zakat akan dirombak”, *BH*, 27/8/96.

⁸⁷⁴The Department of Inland Revenue Malaysia (IRD) became a statutory board on 1/3/96, and is now formally known as the Inland Revenue Board of Malaysia (IRB). See IRB’s internet homepage, <http://www.hasilnet.org.my/>

⁸⁷⁵“Income tax cut for zakat by end of the year”, *NST*, 31/5/96; “Potongan zakat gaji akhir tahun”, *BH*, 31/5/96; “Potongan zakat menerusi gaji masih dikaji”, *BH*, 22/5/96.

⁸⁷⁶“Zakat menerusi LHDN akhir tahun”, *UMA*, 31/5/96; “Kutipan zakat RM200j setahun”, *Watan*, 8/11/96; “Collection of tithes to hit RM200m”, *The Star*, 8/11/96; “Kerajaan mampu menambah zakat”, *UMA*, 7/11/96; “Zakat: Tiga pihak selesai rundingan”, *BH*, 7/11/96; “Pusat latihan pengurusan institusi zakat dirancang”, *UMA*, 16/12/96; “Bina pusat kemahiran”, *Watan*, 16/12/96.

Jabatan Kemajuan Islam Malaysia (JAKIM) pertaining to issues related to standardisation of zakat administration at states level.⁸⁷⁷

Disbursement Formula of Zakat Collected by the IRB

Under the proposed mechanism, IRB would deduct 2.5% from the taxpayer's gross income through monthly deduction via the PCB mechanism. In the first phase of implementation, IRB would only collect employment zakat based on the information available in the IRB's computer database.⁸⁷⁸ Collection by the IRB would be deposited in the IRB's consolidated account which would be electronically transferred to LUZAM's zakat account, both accounts being held in the Central Bank. It worth noting that at this point that IRB's modest proposal to take 1/24th⁸⁷⁹ of the gross collection, rather than 1/8th as legally allowed, as the cost of administration, was not clearly defined. On the other hand, it appears that LUZAM's disbursement mechanism was explicitly outlined by the "Sub-committee for the establishment of LUZAM". The proposed disbursement formula is best illustrated graphically as in Chart 5.1:⁸⁸⁰

Based on the mathematical formula recommended by the finance sub-committee of LUZAM, it appears that, in effect, LUZAM is reaping more than 1/8 (12.5%) as allowed to its function as amil. Though, nothing in the report of the sub-committee refers to the basis of calculations of reaping more than 12.5%, LUZAM appears to justify this through a coordination of large scale programs to alleviate poverty amongst Muslims

⁸⁷⁷"LUZAM selaraskan sistem pungutan zakat", *BH*, 13/11/96; "Law to make zakat payment compulsory", *NST*, 8/4/97; "Hamid: Better way to collect tithes needed", *The Sun*, 8/4/96; "Pusat latihan kemahiran dibina hasil daripada zakat", *UME*, 16/12/96.

⁸⁷⁸IRB would collect all types of zakat except fitrah, zakat on agriculture and livestock which would remain under the jurisdiction of respective MAIN. See Perakuan Jawatankuasa Kecil Kewangan Lembaga Urusan Zakat Malaysia (LUZAM), 16/2/94, p. 18.

⁸⁷⁹See p. 298 for an account of IRD's proposal.

⁸⁸⁰Perakuan Jawatankuasa Kecil Kewangan Lembaga Urusan Zakat Malaysia (LUZAM), 16/2/94, pp. 18-20.

with the state Governments, MAIN, and various Federal agencies such as the *Amanah Ikhtiar Malaysia*, Ministry of Finance, Ministry of Rural Development, and *Yayasan Basmi Kemiskinan* (Poverty Eradication Foundation).

As discussed above, the establishment of LUZAM would consists of representatives from each state. Much of the politics of LUZAM, it may be suggested, is immediately clear from its membership, which prevents domination by representatives of MAINs and dictation of LUZAM's policies. The board of directors, appointed by the Prime Minister, was to consist of 14 members.⁸⁸¹

⁸⁸¹Perakuan Jawatankuasa Kecil Kewangan Lembaga Urusan Zakat Malaysia (LUZAM), 16/2/94, pp. 23-24. Members of the board are chairman, executive director, EPU, Finance Ministry (Tax Division or Finance), IRB, Central Bank, , BAHEIS of Pusat Islam, one ordinary member from private sector, and three representatives from MAIN appointed on rotation basis.

Chapter Six

Retrospect

Chapter 6

RETROSPECT

Before the advent of the colonial residential system, the system of taxation in the Malay states, widely known as feudal taxation, was under the control and manipulation of the Sultan who stood at the apex of the political structure with several important office bearers and supporting chiefs. There were in reality no centralised administrations in the Malay states, and state treasuries were under the prerogative of the Sultan. Modes of taxation were limited to agriculture produce and customs duties imposed along the river of which territorial chiefs had their own customs stations on their stretches of river. According to one British observer, “every chief in his own place took something”.⁸⁸² In some instances, collection rights were leased to other Malays, or to Chinese or Europeans; others were entrusted to agents who collected on a commission basis, so that revenue collection ramified endlessly and gave profit to large numbers. Under this tributary system, it was possible for the same commodities to be subject to multiple taxation when they passed through different territorial jurisdictions on their way to final destinations. On the other hand, the Sultans exacted what taxes they could which were then used to suppress the power and influence of territorial chiefs so that their power would be diluted, while at the same time the Sultan depended on the territorial chiefs for both administration and defence of the state.

Up to 1874, the Straits Settlements had undergone tremendous changes in status and administration and inevitably served as a gateway to the Malay states, which later led to a fundamental change in the long-standing British “non-intervention policy” towards direct intervention in the affairs of the states. The Pangkor Engagement of 20 January, 1874 marked the beginning of direct British intervention in the Malay States.

⁸⁸²See page 36

As discussed in Chapter 2, the powers of the Malay sultans were compromised when the British administration took over the revenue system of the Malay sultanates and in return gave pensions and small roles in government to territorial chiefs. What was left to Malay authority was managing Islam and Malay custom.

In due course governments of both the Straits Settlements and the Malay states were administered by officers trained by the same system of administration and answerable to the Secretary of State for the Colonies in London. In most instances, the development of the taxation system was modelled on British practice, and attempts were made to standardise taxation in both colony and protectorates. Joint Taxation Committees were on common ground in expanding existing instruments and introducing of new tax measures. Duties were subordinated to excise, import, and land taxes. There was extensive exploitation of tin-ore deposits, and an upsurge in rubber production after 1900. These commodities became the main contributors to the Treasury of the Federated Malay States government in the form of export duties.

With the development of tin and rubber production in the Malay Peninsula, came an influx of Indian immigrants to cater for the need for estate workers and of Chinese immigrants to work as tin miners. This influx was not only solved labour problems but gave rise to the problems of illegal gambling, intoxication, and the influence of opium. As in other the British controlled territories regulation of the expansion of these illegal activities resulted in new tax measures being introduced in the form of utility taxes exacted under the mechanism of various Ordinances and Enactments passed by the Legislative Council in the Straits Settlements and the Federal Council in the Federated Malay States.

Though the Straits Settlements government was aware that there would be opposition, they still proceeded with the imposition of additional taxes, from the exploration of uncharted areas of taxation such as death duties, to taxes on insurance, mine charters and fire policies. The first decade of the century also saw the introduction

of the Stamp Ordinance of 1907, similar to that already imposed in India, England and Hong Kong. In the Federated Malay States, following in the footsteps of the Straits Settlements, various tax-related committees had been at work to assimilate and federalise all tax instruments to those currently in force in the SS.

The largest single contributor to the revenues of the Straits Settlements had been the government opium monopoly which contributed nearly 50% of the total revenue generated in the first two decades of the 20th century. The principal sources of revenue in the Federated Malay States had been the export duties on tin and rubber, land rents and land sales including opium and liquor monopolies. However, the weakness of its tax policy was that it was susceptible to world demand for Malaya's staple products, making its revenue singularly inelastic.

By the end of the first decade of the new century, the depressed state of the United Kingdom markets further exacerbated the economy of the Colony and the Federated Malay States which resulted in the lowest prices for produce realised for many years. With potential decrease in revenue compounded by an additional burden in the form of the compulsory military contribution of 20% of total revenue, and with the revival of a widespread anti-opium movement locally and abroad (especially in the United Kingdom), which resulted in a shifting of public attitude to and awareness of its injurious effects on addicted smokers, the Colony and the Federated Malay States appeared to be drifting into a state of poverty. By October 1909, the Straits Settlements government decided under protest to concur with the recommendations of the Opium Commission to abolish opium farm system which was being adopted by the Imperial Government in London.

The idea of imposing taxation on income was still lingering in the British administrators' fiscal policies. Though first mooted in the Supply Bill of 1908 in the

Straits Settlements, completed draft legislation based on the Indian model,⁸⁸³ resurfaced which was expected to come into operation with effect from 1st January of 1912 in the Colony but not in the Federated Malay States. The reason Government had given for the need to introduce this form of taxation was that they expected an early extinction of the opium revenue.

With the advent of World War I (1914-1918), all British Colonies and Protectorates were forced to remit at least 20% of their gross revenues to the Imperial Government as annual military contribution, on top of various fund-raising instruments being introduced by local British administrators. War Tax Policy became a household name in the Federated Malay States and Straits Settlements. In almost every council proceeding, every tax instrument was subject to tax hike. Both governments promised that these tax measures were temporary.

After extensive representations by the public, no further reference to income tax appears to have been made until 16th June, 1916, when, in the course of a debate in the Straits Settlements Legislative Council on a motion to make a contribution towards Imperial War Expenditure, a proposal was put forward to supplement the contribution by means of the proceeds of an income tax; concealed under the name of a war tax.⁸⁸⁴ Arising out of this, a bill for imposing an income tax was framed, and laid out to the Council but met with considerable opposition at first, and was, for a time, superseded by a counter-proposition for a *Schedule of new Taxes*, and increased rates of some existing duties. The public, left without much choice was, however, clear in their position that it should be called a "War Tax", instead of an income tax; denoting that it was temporary. However, a revised bill to impose a tax on the basis of income, the revenue to be applied to War purposes, became effective from 1st January, 1917. The provisions of the 1917 Ordinance of the Straits Settlements were continued in force

⁸⁸³ At this time, the legislation, *Bill for Imposing a Tax on Income*, was drafted with anticipation that it would be enforced both in the Straits Settlements and the Federated Malay States.

⁸⁸⁴ See page 119. The "Bill for Imposing a Tax on Income" was withdrawn on 27/1/1911.

by re-enactment in each of the two years immediately following, and the tax was levied and collected under the authority of the War Tax Ordinances, 1918 and 1919.

Fear amongst the European and Chinese business community that the War Tax would become a tax on income finally became a reality. After getting the blessing of the majority of Council members, in 1920, the War Tax was converted into an income tax, which was re-imposed in 1921 and 1922. The proceeds, however, continued wholly in 1920 and partly in 1921, to be used for War purposes, but when in 1922 it was proposed to retain the tax as an income tax, pure and simple for the general revenue purposes of the Colony, public agitation brought about its removal. Practically speaking, even though no further reference was made to income tax until 1940, a series of debates which took place in 1926 and 1927 indicated that the Straits Settlements government in particular had a lingering affection for income tax as a ultimate replacement for the anticipated diminution of opium revenue.

The third and fourth decades of the century saw the world-wide trade depression start to grip the Colony and the Federated Malay States's economies with exceptional severity because of the sharp decline in the prices of rubber and tin. Rubber and tin had hitherto been the principal products of Malaya and the depressed state of these industries was, therefore, inevitably reflected in the revenues of the Malayan Governments.

Both governments embarked on special programmes in an attempt to balance its budget. Apart from cutting down some of the extravagant and non-recurrent expenditure, tax rates were instead increased under provisions for Estate Duties, Stamp Duties and Petroleum Tax, despite objection to the sudden appearance of these new taxes in the legislative programme. Though there were suggestions to increase postage or stamp duties in other directions, increase duties on liquor and tobacco, and partially if not wholly credit the general revenue with the principal and interest of the Opium Revenue Replacement Reserve Fund, the Currency Guarantee Fund, and other sinking funds, the government was adamantly opposed to most of the suggestions.

In the late summer of 1939, World War II erupted in Europe. Shortly after the outbreak of the war, the Government of the Straits Settlements and the Federated Malay States appointed a Joint Committee to consider the question of contributions to the Imperial Government and the raising of such contributions by means of war taxation. The *modus operandi* was the same as in the previous war. As expected, based on previous experience of War Tax and Duties imposed during World War I, following these recommendations of the Joint Taxation Committee, certain existing duties were increased and other new duties and taxes were imposed under the War Tax Ordinance, and the whole of the gross proceeds were remitted periodically to London as a gift to the Imperial Government, including the annual 20% of the gross revenue towards defence.

When the war was over, it became clear that the income tax was fated to become a permanent feature of the system of taxation of both territories. The Joint Taxation Committee concluded that there was, perhaps a more general acceptance of the merits, in principle, of direct, as opposed to indirect taxation in Singapore than in the Malayan Union, due possibly to the realisation that the traditional concept of a free port, dependent almost entirely on its entrepôt trade, precluded the raising of revenue by additional import duties in the Colony. Finally, income tax was brought into effect in the Federation of Malaya from 1st January, 1948 by the Income Tax Ordinance No. 48 of 1947. The 1947 Ordinance was enforced both in Malaya and Singapore until late 1951.

Development of the MAIN and religious taxation system

As aforementioned, the powers of the Malay sultans were compromised when the British Administration took over the revenue system of the Malay Sultanate and in return the members of the Malay Sultanate were given pensions and small roles in government. What was left was managing Islam and Malay custom.

The development of religious administration had gone through many turbulent years. The era of the modern establishment of the Majlis Ugama, based on Western

precepts, was undoubtedly pioneered by Kelantan as noted by William R. Roff.⁸⁸⁵ Thereafter, other states followed suit, adopting Kelantan's model as a basis for their Majlis Ugama. Though, some attempt was made to unify the practice of state MAINs, the end product of development resulted in different sets of enactments and rules governing religion in general, and zakat and fitrah taxation in particular. The most striking result of "local adaption" was found in the disbursement system employed by respective states. Part of the revenues generated from zakat and fitrah was used to sustain the operation of the MAIN and the zakat machinery.

At the same time, development of MAIN was influenced by the colonial residential system. The state legal offices and state secretariats, mainly manned by British administrators, were directly involved in the process of formulation of enactments and rules. Though in theory the indirect involvement appears to breach the Pangkor Engagement, in some states it was the request of the Ruler to the Resident to assist the MAIN which led to streamlining its zakat and fitrah administration.

The process of bureaucratization and modernization of the MAIN and the zakat machinery was successful in its way, but with a fatal casualty: the system was too complicated for the layman to understand. The agents of the new machinery, consisting of mosque office bearers, and other local influential Malay figures, to whom Western education and training were foreign, were not able to appreciate the importance of the new regulations, particularly the new English style of accounting and management. In addition, due to the close proximity of zakat matters to religion, most amils were reluctant to enforce strictly the provisions of enactments and rules, especially when dealing with zakat defaulters. Similarly, the system of provisional assessment was not fully understood or was met by a refusal to understand by potential taxpayers.

As the establishment grew, together with the increased expectation of Muslims,

⁸⁸⁵William R. Roff in "The Origin and Early Years of the Majlis Ugama", in William R. Roff (ed), *Kelantan: Religion, Society & Politics in a Malay State* (Oxford University Press, Kuala Lumpur, 1974).

catalysed and motivated by the changes in the religious machinery, the MAIN realised that the need for an efficient and stable source of income was pressing. The 1950's and 1960's saw aggressive reformulation of zakat enactments and rules intended to guarantee the MAIN's revenues, but still focused on zakat padi and fitrah. However, as has been discussed, the progress in improving new zakat and fitrah machinery was forestalled by a series of objections from freelance ulama and religious *pondok* teachers outside of the MAIN, resulting in fatwas issued by the MAIN being practically ignored. This negative attitude, instigated by influential Malay newspapers, agitated the general public who were still vague on the new reform and illiterate in Islamic precepts.

The advent of 1968 saw the long-awaited reform appear imminent with numerous resolutions passed during the first Bumiputra Economic Congress, 1965. Though structural tensions were still inherent in the division of religious authority between ulama in and outside the MAIN, the increase in awareness and renewed insistence on change influenced the course of reform and began to alter classical perceptions of zakat. The main objective of the first Ulama Congress, 1968 was to draw up recommendations for the utilization for Muslim development of the zakat and fitrah collections, but these were not acted upon by respective state religious authorities.

In 1974, the reform initiative was given fresh impetus when the Federal Government's Pusat Islam sought to explore the possibility of extending the scope of taxation. However, by 1975, despite aggressive bureaucratization of zakat machinery affecting, the administration of zakat and fitrah in most states had failed to solve the inefficiencies resulting in disappointingly poor responses in the collection of zakat and fitrah. The Federal Government's attempt to federalize the collection and disbursement of zakat is reminiscent of the days of the British colonial administration when the Malay rulers' and territorial chiefs' revenue system was compromised. In as much as the participants in the conference of the Ulama Congress knew that "cross-boundary" disbursement was a fundamental issue for a meaningful federalized corporate zakat mechanism, the disagreement appears to point to a more fundamental question: consent

of the Council of Rulers.

Despite the efforts made by the Federal Government to federalize the administration of zakat and fitrah, Islamic matters remained the domain of the state governments until the late 1970's. With the advent of the 1980's, Muslims in Malaysia, as a result of successive newspaper articles and zakat seminars held nationally and internationally, showed a clear tendency to pressure the Federal Government to raise the status of Islam as the official religion and to implement Islamic principles in this field. The new wave of expectations had resulted in the emergence of a new "vector" for Islamisation.⁸⁸⁶

By the middle of 1985, the Baitulmal of the Federal Territory, being the largest zakat collector, divulged that they were having acute problems with the procedures of zakat assessment, particularly in the assessment of business zakat and were contemplating a national zakat seminar to address these issues. The problems were compounded by a lack of experts in modern accounting and management, as well as experts in the assessment procedures of business zakat according to Islamic law.

Despite mounting administrative problems never adequately faced by the MAINs and Departments of Religious Affairs, the advent of the 1980's was marked by a tendency on the part of some, particularly in the Federal Territory and Kedah, to venture into new territory; creating a new tax base through the imposition of zakat on employment income, which was naturally easier to regulate and control. In fact this is the result of an IRD initiative pioneered through the first zakat seminar organized jointly with the Baitulmal WP and the *Persatuan Ulama Malaysia* (Malaysian Ulama Association) held on 5th May, 1986 in Kuala Lumpur, which provided the main impetus and instigated much attention from the mass media, Muslims in general and the Federal Government, in particular, for the view that zakat on employment income would be a

⁸⁸⁶For detailed discussion, see William R. Roff, "Patterns of Islamization in Malaysia, 1890-1990s: Exemplars, Institutions, and Vectors", *JIS*, Vol. 9, No. 2 (July, 1998).

feasible alternative

The role played by IRD in the foregoing provoked much attention and interest nationwide amongst politicians, academicians and religious leaders. By early 1988, a subsequent seminar jointly organized by the IRD, the Department of Religious Affairs of the PM's Department and the Majlis Ugama Islam Wilayah Persekutuan was held in Kuala Lumpur with papers emphasizing the relation of zakat to income tax. During this seminar, the proposal for zakat on employment income became gradually more acceptable following papers presented by various established and well-known participants converging on agreement that income from employment was Islamically taxable.

The success of these zakat seminars, though still stuck at a theoretical level, led to a third seminar in 1990 and eventually set the path toward the possibility of the federalization of zakat administration. With the blessing of the PM's Department, these important events had undoubtedly provoked the MAIN in all states to formulate a program of how to promote better understanding on zakat principles and higher compliance.⁸⁸⁷ In the following year meetings at Federal level were organized. By this time, Central Bank involvement, upon the directive of the Minister of Finance, was inevitable when a report *Cadangan kutipan zakat menerusi Jabatan Hasil Dalam Negeri* (Proposal to collect zakat through the IRD) was presented to the Federal government for consideration.

The 1990s saw the Federal Government reaffirm its commitment to standardize zakat administration. The report submitted by the Central Bank was adopted by the Finance Ministry when on 31st October, 1992, during the tabling of the 1993 Federal Budget, the Finance Minister announced that the collection of zakat would be normalized and standardized at a Federal level, and with the cooperation of the IRD an

⁸⁸⁷Copy of minutes of meeting of Jawatankuasa Seruan Zakat, 23/4/90.

inquiry would be conducted into the possibility that the IRD be appointed as a federal amil.

By this time, a corporate vehicle to collect zakat on the behalf of the MAIN had been established. However, the pro-active role played by the Federal government in bringing the IRD into the picture, and the proposed creation of LUZAM, was seen as a threat to the existence of the MAIN as the sole collector of zakat at state level. Various attempts by the Federal Government through various Federal agencies were forestalled. The MAINs were becoming more aggressive in creating a corporate entity to act on their behalf on matters relating to zakat collection. Through these corporate entities, the administration was modernised. Signing of MoUs with banking institutions were common features in the MAIN agendas.

Though the federalisation of zakat administration is beyond doubt the ultimate solution to the past and present problems faced by the MAIN, one ponders whether LUZAM is really needed when the IRB with all its expertise and modern infrastructure could easily handle the function of amil with minimum cost to the state MAIN.

Appendices

Appendix 2.1

Statement of Annual Revenue and Expenditure for the SS and the FMS (1906-1937)

Straits Settlements			Federated Malay States	
Year	Revenue	Expenditure	Revenue	Expenditure
1906	9,618,313	8,747,819	N/A	N/A
1907	10,023,016	9,499,693	N/A	N/A
1908	8,969,015	9,837,624	N/A	N/A
1909	8,795,001	8,542,730	N/A	N/A
1910	9,336,328	7,532,242	N/A	N/A
1911	11,409,221	9,085,389	N/A	N/A
1912	12,912,557	9,291,102	N/A	N/A
1913	12,397,747	10,468,618	44,332,711	47,287,581
1914	N/A	N/A	N/A	N/A
1915	N/A	N/A	N/A	N/A
1916	N/A	N/A	N/A	N/A
1917	N/A	N/A	N/A	N/A
1918	23,262,015	15,966,145	68,448,862	45,286,910
1919	34,108,465	34,901,233	72,135,075	70,676,961
1920	42,469,620	39,260,318	72,277,146	100,433,471
1921	39,545,735	35,430,899	54,449,568	114,386,546
1922	34,103,462	24,797,085	52,494,110	49,811,007
1923	33,316,015	26,717,778	63,952,132	52,825,572
1924	28,639,161	26,706,316	70,715,407	54,161,234
1925	53,850,960	57,593,959	86,564,279	69,550,382
1926	36,465,213	36,955,640	102,541,400	87,663,747
1927	37,602,081	39,253,272	105,404,458	93,263,915
1928	38,092,221	35,007,608	95,655,560	109,004,240
1929	54,888,291	35,711,997	81,799,584	84,660,975
1930	32,408,305	39,240,315	65,560,870	82,470,192
1931	26,601,528	46,802,558	52,348,659	62,163,328

1932	44,562,295	34,196,483	43,817,151	53,740,139
1933	31,585,190	30,476,291	47,198,806	50,258,671
1934	34,244,603	30,937,262	58,926,323	47,211,228
1935	35,040,380	34,764,640	62,364,264	51,119,943
1936	35,124,137	33,398,912	68,090,902	52,702,228
1937	37,348,383	42,038,482	80,864,589	71,143,470

[Source: Returns for 1929 to 1937 omit the Railway receipts and expenditure. Data for 1913, and, 1918 to 1937 was extracted from Lennox A. Mills; *British Rule in Eastern Asia*, pp. 80-109. Statistics for 1906 to 1912 for the SS were extracted from *Parliamentary Papers* (Accounts and Papers, Great Britain), 1912-13, Vol. lviii; *Parliamentary Papers* (Accounts and Papers, Great Britain) PP, 1914-16, Vol. xliv, *Parliamentary Papers* (Accounts and Papers, Great Britain), 1916, Vol. xix. Selected and rearranged by the researcher].

Appendix 3.4

**Comparison of Taxation per Head in various Countries:
UK, France, Germany, USA, Federated Malay States, SS**

No. 10				
MONDAY, 12TH FEBRUARY, 1934				
COMPARISON OF TAXATION PER HEAD IN VARIOUS COUNTRIES				
Country	Taxation per Head 1933/34	Par Value of Exchange Rate with Sterling	Exchange Rate on 6-12-33 with regard to Sterling	Equivalent of Col. (2) in Sterling on 6-12-33
(1)	(2)	(3)	(4)	(5)
				£ s. d.
* United Kingdom ...	£14 10 6	14 10 6
* France ...	1,096 francs	124.21	83½	13 3 3
* Germany ...	105 reichmarks	20.43	13.65½	7 14 1
* United States of America ...	\$U.S.A. 18.56	4.86½	5.12½	3 12 5
Federated Malay States ...	\$18.58	£7=\$60	£7=\$60	2 3 4
Straits Settlements ...	\$16.91			1 19 5

* Figures quoted by Mr. Hore Belisha in the House of Commons (Vide Singapore Free Press of 12th December, 1933).

[Source: ANM/KL SS 17 : LCP, 3rd December, 1934, p. C30]

Appendix 3.5

National Taxation of the SS for 1934

NATIONAL TAXATION STRAITS SETTLEMENTS			
Heads of Taxation (1)	Actual Revenue 1932 (2)	Revised Esti- mates 1933 (3)	Estimates 1934 (4)
	\$	\$	\$
CLASS I			
1. Port, Harbour, Wharf and Light Dues, Labuan ...	2,436	2,212	2,300
2. Licences, Excise and Inter- nal Revenue not other- wise classified (Less Fines and Forfeitures)	18,687,484	18,317,681	17,195,559
Total ...	18,689,920	18,319,893	17,197,859
Population ...	1,076,564	1,040,710	1,060,454
Taxation per Head ...	\$17.36 £2.0.6	\$17.60 £2.1.1	\$16.22 £1.17.10
		£1.19.5	

[Source: ANM/KL SS 17 : LCP, 3rd December, 1934, p. C30]

Appendix 3.6

National Taxation of the Federated Malay States for 1934

C 31

FEDERATED MALAY STATES

Heads of Taxation (1)	Actual Revenue 1933 (2)	Revised Estimates 1933 (3)	Estimates 1934 (4)
	\$	\$	\$
CLASS I			
1. Customs ...	13,765,649	15,530,805	19,360,600
2. Excise ...	5,464,671	5,066,099	5,103,000
3. Forests (Less Compensation, Fines and Reimbursements) ...	626,885	562,187	594,655
4. Lands and Mines ...	4,017,682	4,065,264	4,659,067
5. Licences and Internal Revenue ...	2,785,614	2,467,556	2,454,784
Total ...	26,660,501	27,691,911	32,172,106
Population ...	1,622,903	1,597,770	1,622,377
Taxation per Head ...	\$16.43 £1.18.4	\$17.33 £2.0.5	\$19.83 £2.6.3
		£2.3.4	

J. I. MILLER,
Registrar-General of Statistics,
S.S. & F.M.S.

SINGAPORE, 20th December, 1933.

[Source: ANM/KL SS 17 : LCP, 3rd December, 1934, p. C31]

Appendix 3.7

Record of Income Tax collected from 1948 - 1961 inclusive since the tax first imposed in the Federation of Malaya.

	Income Tax Collected (\$ million) ¹	Total Federation Revenue (\$)	% (Income Tax of Total Revenue)
1948/49	40	-	
1950	47	443	10.6
1951	127	735	17.3
1952	220	725	30.3
1953	175	620	28.2
1954	123	622	19.8
1955	107	797	13.4
1956	138	803	17.2
1957	133	797	16.7
1958	119	762	15.6
1959	132	890	14.8
1960	186	1043	17.8
1961	233	971	24.0

[Source: ANM/KL P/HDN (X), *Personal Income Tax in the Federation of Malaya*, (Comptroller-General of Income Tax, Kuala Lumpur, 15th February, 1963) p. 24]

¹ Adjusted figures including tax collected outside the Federation during the respective years and brought to account after the end of the year.

Appendix 3.8

History of Administration and Collection of Direct Taxes in Malaysia (1900-2020)

Era of Tax Administration	Type of Taxes
Pre Income Tax (prior to 1946)	Opium Revenue Liquor Revenue Petroleum Revenue War Taxes
Income Tax Ordinances of 1947 Pan Malaysian (1947-1966)	Income Tax Payroll Tax TurnOver Tax Estate Duty Stamp Duty Film Hire Duty Betting and Horse Race Duties Business License and Registration
Income Tax Act 1967 Malaysia (1967-1993)	Income Tax Petroleum Tax Development Tax (1969-1992) Timber Tax (1969-1986) Tin Profit Tax (1969-1986) Real Property Gains Tax Estate Duty Stamp Duty Film Hire Duty Business License and Registration (Sabah) Land Speculation Gains Tax (1974-1975) Share Transfer Tax (1984-1988)
1994-2020	Income Tax Petroleum Tax Real Property Gains Tax Stamp Duty Betting and Horse Race Duties Film Hire Duty Business License and Registration (Sabah)

[Source: Inland Revenue Board]

Appendix 4.1

Form A: "Saman Kepada Orang Yang di Tuduh" (Summon to the Defendant)

JADUAL KEDUA

Borang A

(Fasal 20)

Saman Kepada Orang Yang Dituduh

Kepada yang tinggal
 di bahawa kamu dikeher-
 daki hadir untuk menjawab satu tuduhan

 dan kamu diminta hadir pada pada
 pukul samada kamu sendiri hadir (atau
 oleh Peguam, yafi mana yang berkenaan) di Mahkamah Kadi di

Bertarikh pada19...

(Metri)

.....
 Kadi/Penolong Kadi

Appendix 4.2

Form B: "Waran Menangkap" (Warrant of Arrest)

BORANG B

(Pasal 29)

Waran Menangkap

Kepada Ketua Pegawai Polis bagi Negeri
 dan semua Pegawai-pegawai Polis yang lain.

Bahawasanya yang
 tinggal di dituduh dengan
 kesalahan
 maka kamu diperintah menangkap
 membawa ke Mahkamah Kadi di

Bertarikh padahb..... 19....

(Metri)

.....
 Kadi/Penolong Kadi.

[Source: "Enakmen Pentadbiran Ugama Islam Pindaan Bil. 4 Tahun 1975", ANM/KL/R/HEUI 5]

Appendix 4.3

Relief Provided under section 14(g) of the Income Tax Ordinance, 1947

File No. Jlm. R.A. & C Set
 Tel No. 31341-Klang.

Majlis Ugama Islam dan
 Adat Istiadat Melayu, Selangor
 Klang, 7 July, 1952.

To,

Tuan,

**KENYATAAN UNDANG2 ZAKAT DI-BAWAH
 UNDANG2 PENTADBIRAN UGAMA ISLAM
 NEGRI SELANGOR No. 3 TAHUN 1952.**

Ehwal dengan hormat-nya saya tarik perhatian tuan kepada kewajipan orang2 Islam dalam negeri ini menunaikan Zakat kepada Majlis Ugama Islam, Selangor mengikut peratoran2 di-bawah Undang2 tersebut di-atas. Seperti sedia ma'om bahawa sa-nya kutipan daripada Zakat itu ada-lah di-bagi-bagikan kepada mereka2 yang berhak dalam Asnaf Delapan. Peratoran fasal 15 dan 16 di-bawah Undang2 tersebut ada-lah bermaksud seperti berikut:—


Fasal 15. Bagi melaksanakan kutipan Zakat Majlis Ugama ada-lah berkuasa meminta orang2 Islam memberi penoh penyata kaadaan harta dan yang tertanggung pada-nya, sama ada sa-bagai harta sendiri atau pun harta pertiagaan di-bawah jagaan-nya. Sa-suatu penyata itu hendaklah perkiraan hingga akhir tahun.

Fasal 16. Manakala Zakat telah di-nilai pada pendapatan kenyataan (notis) di-sampaikan atau di-kirim melalui pos rejista kepada sa-orang yang di-kenakan Zakat atau kepada orang menjaga pertiagaan atas harta yang di-nilai itu, maka wajiblah ia membayar Zakat kepada Majlis dalam tempoh tiga puluh hari daripada tarikh kenyataan (notis).

2. Maka tinggi-lah harapar Majlis Ugama sa-kira-nya tuan isikan Borang Pengakuan Zakat yang di-bawah ini dan kirimkan balik kepada saya bersama-sama dengan zakat yang di-wajibkan atas harta pendapatan tuan dengan beberapa segera. Undang2 ada menerangkan bahwa orang2 Muslim yang tiada menunaikan atau dengan sengaja tidak indahkan kenyataan (notis) ini ia ada-lah salah pada Undang2 Mahkamah dan harus di-denda sa-ratus ringgit atau kena penjara selama tujuh hari.

3. Bagi pengetahuan tuan bahwa fasal 14(g) Undang2 Income Tax tahun 1947 membenarkan bayaran Zakat di-tolak daripada pendapatan yang di-kenakan cukai.

Ada-lah saya dengan hormat-nya,
Haji Mohd. Ali Bin Taib,
 Yang Di-Pertua,
 Majlis Ugama Islam dan
 Adat Istiadat Melayu Selangor.



Appendix 4.4

Borang Pengakuan Zakat (Form for certifying payment of business zakat)

No. dlm M.U.I. Sel.

BORANG PENGAKUAN ZAKAT.

Adalah saya dengan sebenar-nya menyatakan bahwa keadaan harta berseh saya^{*} harta perniagaan/kedai yang di bawah jagaan saya bagi akhir tahun 19 .., adalah \$..... Dua setengah (2½) peratus daripada itu ialah \$..... yaitu jumlah Zakat yang di-wajibkan.

Maka setengah atau 50 peratus daripada Zakat yang berjumlah \$..... adia pada simpanan saya dan saya mengaku bahwa ini akan saya senciri membagi-bagikan kepada Asnaf Delapan mengikut Undang2 Ugama Islam tahun 1952.

Dengan surat ini saya kirimkan wang sebanyak \$....., yaitu 50 peratus daripada Zakat itu wang tunai/chek/Money Order. Harap mendapat jawab.

.....
Tanda Tangan.

* Potong-lah mana yang tidak pakai.

PERINGATAN: Jangan-lah kirim wang tunai lebih \$25/- dalam pos.

Formmu 1100 60

[Source: "Majlis Ugama Islam dan Adat Istiadat Melayu Selangor to Secretary, Sharikat Kilang Padi, Bekerjasama, Sungai Besar, 12/10/60", ANM/KL/ Pejabat Ugama Islam Selangor, Bil. 3 dlm M.U.I. Selangor 986/60 (Z)]

Appendix 5.1.1

Working Sheet Y/A 1948

WORKING SHEET.

4

Agent for

Name 22 Little Road

File No. 22 Little Road Year of Asst. 19 48

Information.	Return.	Assessed.	On Objection or Appeal.	Worked by	Approved
\$	\$	\$	\$		
Trade, etc. Year/Period					
to					
Share of Partnership Income					
Employment, Pension, etc. <u>Salary</u>	<u>1,700.-</u>	<u>1,700.-</u>			
C.A.V. of ppty. o/o as residence or of beneficial occupation of residence <u>Colonial Allowance</u>	<u>1,070.-</u>	<u>1,070.-</u>			
Rents and income from property <u>Rents</u>	<u>450.-</u>	<u>450.-</u>			
Dividends, interest, royalties, etc. <u>2.83</u>	<u>2.83</u>	<u>2.83</u>			
Other Income <u>400.-</u>	<u>400.-</u>	<u>400.-</u>			
Wife's Income					
Total	<u>4,222.⁸³</u>	<u>4,222.⁸³</u>			
Deductions for gifts to Approved Institutions					
Total Income		<u>4,222.⁸³</u>			

P.	W.	CH.	L.A. P.F. & W.O.		
<u>3,070</u>	<u>NIL</u>	<u>NIL</u>	<u>850-48</u>		
Chargeable Income \$				<u>1,150.-</u>	

Tax chargeable:-						\$	c.	\$	c.
<u>500</u>	at 3%					<u>15</u>	-		
<u>177</u>	at 4%					<u>20</u>	-		
<u>150</u>	at 5%					<u>7</u>	<u>50</u>		
	at 6%								
	at 7%								
	at 8%								
	at 10%								
	at 12%								
	at 15%								
	at 20%								
	at 30%								
TOTAL \$						<u>42</u>	<u>50</u>		

Assessment.

Notice prepared 4/6

Notice entered on cover slip 22-11-48

Cover slip No. 22-11-48

Notice issued 22-11-48

TAX PAID OR DEDUCTED.

Source of income.	\$	c.
Total		

Repayment.

Claims Reg. No. _____

Amount \$ _____ (in words)

R.O. No. _____

I.T. issued _____

Initials _____

Date _____

Comptroller's initials _____

Date _____

[Source: Inland Revenue Board]

Appendix 5.1.3

Working Sheet Y/A 1977

(U.T. 12a)
(Rev. 11/77)

WORKING SHEET

File No. _____

YEAR OF ASSESSMENT 1977

NAME _____

ADDRESS _____

*Delete whichever is inapplicable.

CODE	TYPE OF ASSESSMENT
01	*Original
02	*Additional
03	*Increased
04	*Reduced
05	*Repayment

ADDITIONAL TAX PAYABLE		FOR PURPOSES OF	ADDITIONAL CHARGEABLE INCOME	ADDITIONAL TAX CHARGED
(18)	Income Tax			
(19)	Tin Profit Tax			
(20)	Timber Profit Tax			
(21)	Development Tax			
(22)	Excess Profit Tax			

Increase in Tax Charged _____

CODE	STATUTORY INCOME	NS	CODE	TOTAL INCOME BROUGHT FORWARD	NS
1	1. Business (including Profession, Vocation and Trade, etc.)		021	Less: Deductions	
2	2. Share of Partnership Income		022	Section 61 (2)	
3	3. Employment:		023	Personal	2000
001	Salary, Wages, Remuneration and Leave Pay		024	Family Income	1000
002	Fee, Commission and Bonus		025	Wife's Earned Income	1000
003	Value of Living Accommodation		026	Children	3000
			027	Life Assurance, Provident and Pension Funds	10000
			028	Chargeable Income	139932
			029	Chargeable Income Subject to E.P.T.	54932
			030	Taxable Tin Profits	
			031	Taxable Timber Profits	
			032	Development Income	
			033	INCOME TAX:	
				Tax on First 5	26850.00
				Tax on Balance 5	30102.60
				TOTAL INCOME TAX	56952.60
			040	Less Rebate:	
				Individual	60.00
				Wife	30.00
				TOTAL	90.00
			041	SUPPLEMENTARY INCOME TAX:	
				Excess Profits Tax -	2736.60
			042	Tin Profits Tax	
			043	Timber Profits Tax	
			044	Development Tax:	
				5% of 5	
				Minimum	
				TOTAL TAX CHARGED	59549.20
			045	Add:	
				Tax previously Repaid	
			046	Penalty imposed under Sections 112(1) and/or 113(1)	
				TOTAL	59549.20
			047	Less: (See Statements attached)	
				Section 120 Relief	
				Section 122 Relief	
				Section 123 Relief	
				Section 124 Relief	
				TOTAL	10953.43
			048	Tax Payable per Assessment dated	
			049	*Tax/Additional Tax Payable	
			050	*Tax Overpaid/Refundable	
				TAX PAYABLE	48665.77
				TOTAL INCOME BROUGHT FORWARD	139932

*Delete whichever is inapplicable.

Employer's Name _____

Employer's Address _____

Occupation _____ Residence _____ C/P 129 _____ Rate _____ Identity Card No. _____

2 1 1 3912318

COMPUTATION OF ADDITIONAL CHARGEABLE INCOME AND TAX CHARGED

CHARGEABLE INCOME AND TAX CHARGED FOR PURPOSES OF:									
(18) Income Tax		(19) Tin Profit Tax		(20) Timber Profit Tax		(21) Development Tax		(22) Excess Profit Tax	
Income	Tax	Income	Tax	Income	Tax	Income	Tax	Income	Tax

Initial figures

[Source: Inland Revenue Board]

Appendix 5.1.4

N/A for Y/A 1977

**JAJARAN BAHIL DALAM NEGERI,
KAWANGAN PENAKSIRAN,
OFF JALAN DUNGLIN,
DAMANSARA, NEGHERS,
KUALA LUMPUR 23-02.**

CUKAI PENDAPATAN/INCOME TAX

TAKSIRAN BAGI/ASSESSMENT FOR

TAHUN TAKSIRAN 1977

YEAR OF ASSESSMENT

BERKAS 1 FORM J

4

Borang ditunjukkan di bawah Seksyen 172 Akta Cukai Pendapatan, 1967.
Form prescribed under Section 172 of the Income Tax Act, 1967.

Taksiran No.: _____

Tarikh/Date: _____

17 SEP 1977

Menurut Akta Cukai Pendapatan, 1967, dan/atau Akta Cukai Pendapatan Tambahan, 1967, satu taksiran telah dibuat berdasarkan nama yang tercantum di atas.
Pursuant to the Income Tax Act, 1967 and/or the Supplementary Income Tax Act, 1967 an assessment is made in respect of the abovesigned.

Pendapatan yang telah kena cukai yang dikenakan ke atas pendapatan ini dan cukai yang dibayar bagi tahun takiran yang tertera di atas adalah ditunjukkan di bawah ini.
The Chargeable Income for the tax charged thereon and the payable for the year of assessment stated above are shown below.

EU SOON HOE,
Ennis Pengarah Hasil Gajian Negeri
Director-General of Internal Revenue
Malaysia

KODA CODE	PENDAPATAN BERKASIN STATUTORY INCOME	M1	KODA CODE	Jumlah Pendapatan yang dikenakan TOTAL INCOME chargeable	M2
1	1. Pendapatan (termasuk) pendapatan, keuntungan dan kerugian dari lain-lain. Income (including) profits, revenues and gains, etc.				
2	2. Saluran Pendapatan Bersejarah Perseorangan. Share of partnership income				
3	3. Penghasilan Employment. Gaji, upah, lesen, royalti dan gaji lain. Salary, wages, remuneration and other fees				
4	4. Dividenden. Dividend				
5	5. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
6	6. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
7	7. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
8	8. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
9	9. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
10	10. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
11	11. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
12	12. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
13	13. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
14	14. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
15	15. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
16	16. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
17	17. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
18	18. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
19	19. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
20	20. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
21	21. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
22	22. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
23	23. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
24	24. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
25	25. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
26	26. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
27	27. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
28	28. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
29	29. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
30	30. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
31	31. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
32	32. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
33	33. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
34	34. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
35	35. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
36	36. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
37	37. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
38	38. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
39	39. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
40	40. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
41	41. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
42	42. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
43	43. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
44	44. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
45	45. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
46	46. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
47	47. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
48	48. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
49	49. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
50	50. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
51	51. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
52	52. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
53	53. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				
54	54. Keuntungan daripada pembelian dan penjualan. Income from purchase and sale of securities				

[Source: Inland Revenue Board]

Appendix 5.1.5

N/A for Y/A 1978

	PENDAPATAN YANG BOLEH DIKENAKAN CHARGEABLE INCOME	7096
000	PENDAPATAN YANG BOLEH DIKENAKAN TERTAKLUK KEPADA C.K.H. CHARGEABLE INCOME SUBJECT TO E.P.T.	
001	KEUNTUNGAN TIMAH YANG BOLEH DICUKAI TAXABLE TIN PROFITS	
001	KEUNTUNGAN KAYU BALAK YANG BOLEH DICUKAI/TAXABLE TIMBER PROFITS	
002	PENDAPATAN KEMAJUAN DEVELOPMENT INCOME	
003	CUKAI PENDAPATAN/INCOME TAX:	
	Cukai di atas \$ 5000 yang pertama Tax on first 5000	375.00
	Cukai di atas baki \$ 2096 12 % Tax on balance 2096	251.52
	JUMLAH CUKAI PENDAPATAN TOTAL INCOME TAX	626.52
046	Ditolak Rebate/Loss Rebates Perseorangan/Individual	
047	Isteri/Wife	50.00
049	Zakat / Fitrah	50.00
	Jumlah Tax ..	
075	CUKAI KEUNTUNGAN BERLEBIHAN EXCESS PROFITS TAX	
035	CUKAI KEUNTUNGAN TIMAH TIN PROFITS TAX	

[Source: Inland Revenue Board]

Appendix 5.2

N/A for Y/A 1977 (Tax Rebate to Individual Taxpayer)

	CHARGEABLE INCOME	129732
070	CHARGEABLE INCOME SUBJECT TO E.P.T.	54732
030	TAXABLE TIN PROFITS	
031	TAXABLE TIMBER PROFITS	
032	DEVELOPMENT INCOME	
033	INCOME TAX:	
	Tax on First \$ 75000	26800.50
	Tax on Balance \$ 54732 @ 55%	30102.50
	TOTAL INCOME TAX ..	56902.50
	Less Rebate:	
046	Individual \$ 60.00	✓
047	Wife 30.00	✓ 90.00
	TOTAL ..	56812.60
	SUPPLEMENTARY INCOME TAX:	
075	EXCESS PROFITS TAX - 54732	2736.60
035	TIN PROFITS TAX—	
036	TIMBER PROFITS TAX	

[Source: Inland Revenue Board]

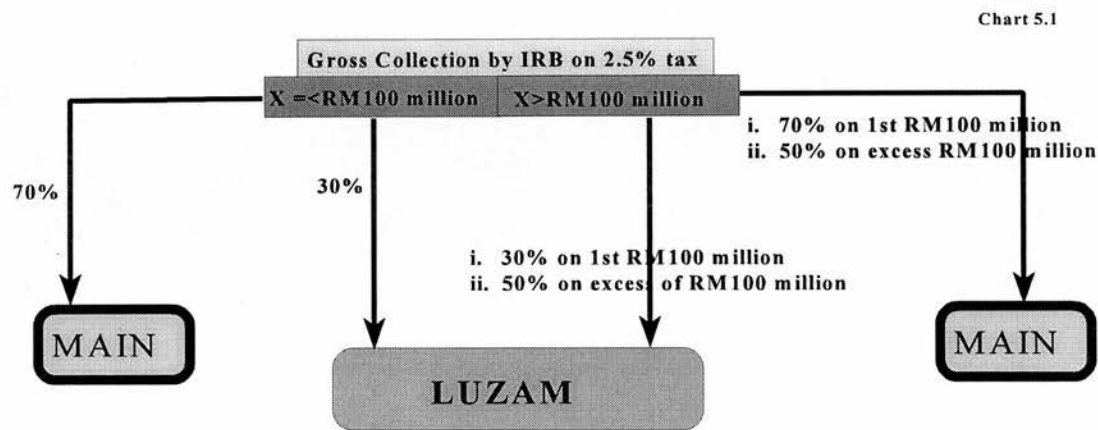
Appendix 5.3

N/A for Y/A 1978 (Tax Rebate for Zakat & Fitrah)

	CHARGEABLE INCOME	709.1
070	CHARGEABLE INCOME SUBJECT TO E.P.T.	
030	TAXABLE TIN PROFITS	
031	TAXABLE TIMBER PROFITS	
032	DEVELOPMENT INCOME	
033	INCOME TAX: Tax on First \$ 5000 Tax on Balance \$ 2096 @ 12% TOTAL INCOME TAX ..	\$ 375.0 251.5 626.5
046	Less Rebate: Individual	\$
047	Wife	
049	Zakat, Fitrah	
	TOTAL ..	566.5
	SUPPLEMENTARY INCOME TAX:	
075	EXCESS PROFITS TAX —	
035	TIN PROFITS TAX—	
036	TIMBER PROFITS TAX	

[Source: Inland Revenue Board]

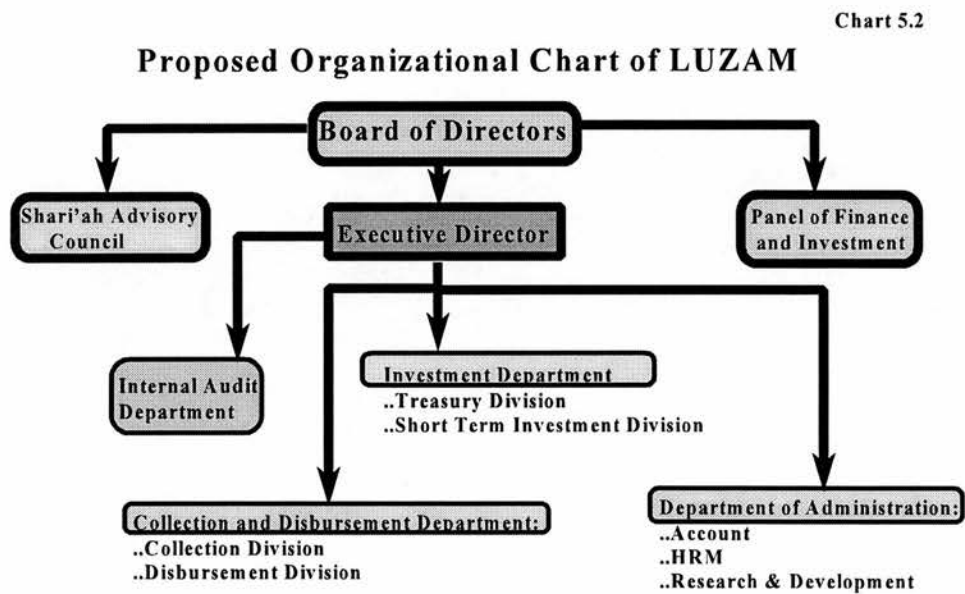
Chart 5.3
Proposed Distribution of Revenue to MAINs and LUZAM



[Source: Chart formulated and arranged by the researcher]

Chart 5.4

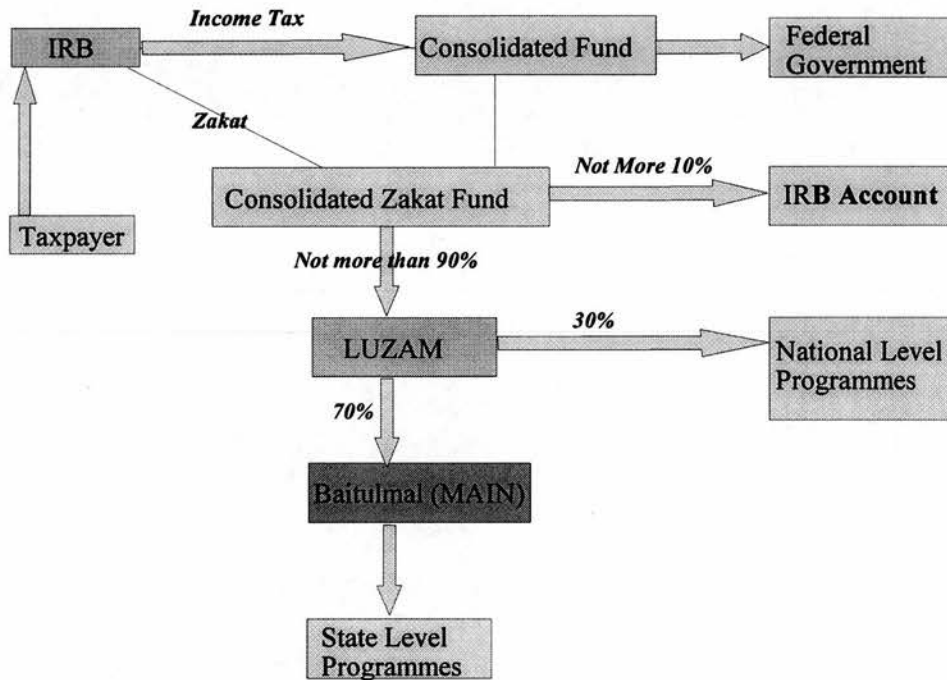
Proposed Organizational Chart of LUZAM



[Source: Chart formulated and arranged by the researcher]

Chart 5.5

Flow Chart of Proposed Collection of Zakat Via the IRB



[Source: Inland Revenue Board. Chart rearranged by the researcher]

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Pahang	<u>371</u>
Perak	<u>373</u>
Perlis	<u>378</u>
Selangor	<u>378</u>
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Selected List of Persons Interviewed

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Dr. Ab. Rashid b. Hj. Dail, Retired Senior Lecturer, Universiti Kebangsaan Malaysia, February, 1999.

Hassan Basri Mat Dahan, Lecturer, University of Malaya, January 98.

Haji Ismail Saad, General Manager, Pusat Urus Zakat Penang (PUZPP). (1991-1993 with PPZWP, 1994-1997 with PUZPP), January, 1996.

Haji Mustaffa Ibrahim, Assessment Officer, Assessment Branch, IRB, Kuala Lumpur, July 1997.

Legislation and Administration of Religious Taxes

Background

The informal institution of zakat in the Malay Peninsula had come a long way since the advent of Islam. It was known that the practices were at kampung level. Until the formulation of enactments and rules to administer zakat collection based on British colonial precedents, Muslims in Malaya were accustomed to disbursing zakat and fitrah dues to any deserving recipients, as interpreted individually by the payer. This is still practised in some states today. In some cases, zakat and fitrah were disbursed for the sustenance of the *surau* and its office bearers, or to the *pondok* and other religious schools run by *Malay ulama* who received no financial assistance from the State.⁵⁶⁴ Even though Shāfiʿī doctrine, the dominant doctrine of the Malays, has formulated a concluding fatwa (*qawl muʿtamad*) that zakat dues must be disbursed to not less than three asnaf out of the possible eight and for every asnaf to not less than three recipients, some Malays disburse zakat to only one recipient. In addition, the disbursing of zakat, especially fitrah, to recipients not within the definitions of the eight asnaf still prevails. As a result of numerous variations in the system of disbursement of zakat and fitrah, compounded by the non-existence of proper administrative mechanisms and non-intervention officially by the state, the proceeds from zakat and fitrah were virtually lost without any alleviation of social disparity among deserving Muslims.⁵⁶⁵

For instance, in Perak, before the establishment of a centralised Western-style zakat administration, collection and disbursement system worked at the local level in each respective mukim. Zakat and fitrah were surrendered to the “pondok teachers”, to the “Haji and Lebai” who lived in that mukim without realising that the recipients were

⁵⁶⁴ Abdul Aziz Mohd Yassin, *Zakat-A Perspective on its Origin and Place in Malay Society* (Academic Exercise, University of Malaya, Singapore, 1957) pp. 10-12; Mujaini Tarimin, *Zakat Pertanian--Sistem dan Perlaksanaannya* (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1990) pp. 54-55.

⁵⁶⁵ Muhamad Ghazali Hj. Abdullah, *al-Itharah*, Majlis Ugama Islam Selangor, 1969, p. 1, cited in Mujaini Tarimin, *Zakat Pertanian--Sistem dan Perlaksanaannya* (Dewan Bahasa dan Pustaka, Kuala Lumpur, 1990) p. 55.